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NATURALIZATION OF INDIVIDUALS BY SPECIAL ACTS OF CONGRESS

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HEARINGS

BEFORE

THE COMMITTEE ON IMMIGRATION AND NATURALIZATION

HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS

FIRST SESSION

ON

H. J. RES. 79

A JOINT RESOLUTION ADMITTING GEORGE A. HUNTLEY TO THE RIGHTS AND PRIVILEGES OF A CITIZEN OF THE UNITED STATES

Serial 6

MAY 17, JUNE 3 AND 27, 1921

STATEMENTS OF

W. W. CHALMERS, JOHN L. CABLE, RILEY J. WILSON, JOHN E. RAKER, JOHN C. BOX, JOHN C. KLECZKA, A. WARNER PARKER

AND A PAPER ON

"Some Vexatious Questions Relating to Nationality," by Fred K. Nielsen

WASHINGTON
GOVERNMENT PRINTING OFFICE
1921

51461

COMMITTEE ON IMMIGRATION AND NATURALIZATION.

HOUSE OF REPRESENTATIVES.

SIXTY-SEVENTH CONGRESS.

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II

JUL 19 1924

NATURALIZATION OF INDIVIDUALS BY SPECIAL ACTS OF CONGRESS.

COMMITTEE ON IMMIGRATION AND NATURALIZATION,
HOUSE OF REPRESENTATIVES,
Tuesday, May 17, 1921.

The committee met at 10.30 o'clock a. m., Hon. Albert Johnson (chairman) presiding.

The CHAIRMAN. The committee will be in order. The meeting this morning was called for the purpose of considering House joint resolution 79, introduced by Representative Chalmers, which reads as follows:

[H. J. Res. 79, Sixty-seventh Congress, first session.]

JOINT RESOLUTION Admitting George A. Huntley to the rights and privileges of a citizen of the United States.

Whereas George A. Huntley was born in Bristol, England, in 1865, but emigrated to this country and received his medical education in this country in the Universities of Vermont, New York, and Harvard, and has established permanent residence in this country; and

Whereas said George A. Huntley joined the American Baptist Foreign Mission Society in 1897, and from then until 1914 was stationed in Hanyang, China, where he was well known to many officers of the American Consular Service; and

Whereas said George A. Huntley's sympathies and interests have been with the United States for many years, so that it has been a matter of keen regret to him and his family that they have been unable to live long enough in the United States to become naturalized; and

Whereas said George A. Huntley and family have for many years done their utmost to uphold American ideals and promote American interests in China, and hope to continue so to do, but would be greatly aided in this if they were granted American citizenship: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That George A. Huntley be, and he is hereby, admitted to all the rights and privileges of a citizen of the United States.

Mr. RAKER. Mr. Chairman, I am going to raise an objection to the consideration of this bill, not to be acted upon now by the committee, but on its final action, on the ground that it is not within the power of Congress to grant a special bill naturalizing any individual.

The CHAIRMAN. We will debate that when you are ready.

Mr. RAKER. I do not want to debate it. I just want to put my objection before the committee, and let it be pending when the committee takes up the bill. Under the Constitution of the United States, Section VIII, we find the following provision:

SEC. VIII. The Congress shall have power * * *
4. To establish an uniform rule of naturalization.

The whole matter, then, will come up before the committee and before the House, on which I will submit authorities and other mat-

ters to follow in the proceedings later, and I do this not because it is this case but because of the desire by many individuals to receive a special act of Congress, and to have the matter determined as far as Congress will for the future guidance of the committee.

My theory simply is that the Constitution has established the power of Congress, and has defined that power by saying Congress can establish an uniform rule for naturalization, but it has not given it the power to naturalize by a special act individuals separate and distinct from the uniform rule that they should enact.

The CHAIRMAN. Having raised that point, you do not care to have a bill sent to the floor of the House for a decision to be reached there, do you?

Mr. RAKER. Well, I think the committee can, in the first place, dispose of it, and if we should report adversely on the bill, then the party would have the right, under the rule on an adverse report, to call it up and have the House pass on it, and of course Congress might do anything. It is then up to Congress to determine whether or not these acts are within its power as defined by the Constitution. That has been called to my attention, but I felt it my duty to call it to the attention of the committee first, and then when the matter comes up in the House at any time later to specifically call it to the attention of the House. Whereas it might not be a sufficient objection to prevent its consideration, still it will call it to the attention of the House, so that they may act upon it in one way or the other, and then the matter will eventually get into the courts for final adjudication.

The CHAIRMAN. Now, then, Congress having granted naturalization in special cases in the past, do you contend that Congress has no right to grant a later naturalization in a special case?

Mr. RAKER. My contention is this, Mr. Chairman, that the power of Congress is limited by that provision of the Constitution. That is specific in that it must be a uniform rule. They have now exhausted their power by adopting a uniform rule for the naturalization of citizens, and the method and mode of that naturalization, and they can not legally, by special act of Congress, naturalize a person.

In the case of Ex parte Frank Knowles (5 Calif., 300) the Supreme Court of California, speaking with reference to this constitutional provision, used the following language:

> That the States, if they choose to exercise the power as an original one, must abide by the rule which Congress makes, there can not be the slightest difference of opinion. The power given to Congress was, according to my apprehension, intended to provide a rule for the action of the States, and not a rule for the action of the Federal Government. Else why was the term "uniform" made to quality "rule"? If it was designed simply to give the power of making citizens to Congress, simpler modes of expression might have been used, and ought to have been required, and surely there would have been no use for the term "uniform." Why should the rule be uniform, unless more than one had to exercise the rule? It certainly could not have been imagined that Congress would have made a rule for its own action, or the action of its own officers, which could have operated without uniformity.

In other words, Congress has to make a uniform rule for the naturalization of all people. Now, they have made that rule, and they exhausted their power when they did it, and they are prohibited by the Constitution from acting on special cases by naturalizing people themselves.

Mr. Box. If they act on cases which do not come within the rule, do they not destroy uniformity?

Mr. RAKER. Yes.

The CHAIRMAN. Concerning certain cases in which naturalization has been granted by Congress, which amounted to repatriation, do you think those were without the power of Congress?

Mr. RAKER. Well, that is a uniform rule; that does not designate anyone. It is a uniform rule as to naturalization applying to every one that comes within that class. Congress says that those who have expatriated themselves and done certain things, and then others that come within a certain specified rule—that all people of that class, by doing certain things, can become citizens of the United States.

The CHAIRMAN. Since I have been in Congress I remember three cases. One was the case of Mrs. Slidel, of Louisiana, the widow of the Confederate emissary, who was restored to citizenship by an act of Congress, and then in recent years we restored Mrs. Mumm to citizenship, and then there was the Chicago case, Mrs. DeHaven-Alten, the granddaughter of Admiral Decatur.

Mr. RAKER. Now, I find this, Mr. Chairman, upon investigation, and I will just let it go in the record. The Library of Congress was only able to find two cases, although there are some of the late ones.

The first is House joint resolution 238, Fifty-fifth Congress, second session, "To readmit Nellie Grant Sartoris to the character and privilege of a citizen of the United States" (30 Stat. L., 1496), May 18, 1898.

The second is Senate bill 3419, Sixty-third Congress, first session, "Admitting to citizenship and fully naturalizing George Edward Lerrigo, of the city of Topeka, in the State of Kansas" (38 Stat. L., 1476). February 23, 1915. Then it shows the action taken.

Then there is the case of Joseph Beech, act of February 20, 1917, Senate joint resolution 208 (39 Stat. L., pt. 2, p. 1495); Senate joint resolution 208, Senate Report No. 1037; passed the Senate at page 3062; passed the House at page 3431; private resolution 5.

Then there is the case of Augusta Louise De Haven-Alten, Senate resolution 134; debated and passed the Senate at page 1818; House Report No. 619; debated in House, pages 5106–5111; Senate concurs in House amendment; private resolution 21, Sixty-sixth Congress.

Then there is the case of Frances S. Mumm, Senate joint resolution 90; debated and passed the Senate at page 6429; House Report No. 363; debated and passed the House at pages 6678–6680; private resolution 1.

The CHAIRMAN. How about the Slidell case?

Mr. RAKER. That is all I could find.

The CHAIRMAN. The Slidell case was passed about three Congresses ago. Mrs. Slidell, Mrs. Mumm, and Mrs. De Haven were women who were American born, but married aliens. Then there was the Lerrigo case. He was British born. That case was somewhat similar to this one, except that Lerrigo thought he had been naturalized through his father.

Mr. RAKER. It just seems to me that it is worthy of the deep attention of the House.

In the case of United States *v.* Wong Kim Ark (169 U. S., 649) the Supreme Court of the United States, at page 702, said:

A person born out of the jurisdiction of the United States can only become a citizen by being naturalized, either by treaty, as in the case of annexation of foreign territory or by authority of Congress, exercised either by declaring certain classes of persons to be citizens, as in the enactments conferring citizenship upon foreign-born children of citizens or by enabling foreigners individually to become citizens by proceedings in the judicial tribunals as in the ordinary provisions of the naturalization acts.

That comes right close to the point.

So I will make that statement for discussion when the matter comes up before the committee.

Mr. SABATH. Your contention is that the Constitution provides that Congress shall have power to establish a uniform rule for naturalization?

Mr. RAKER. Yes.

Mr. SABATH. You do not take into consideration that that means a uniform rule as to States and as to people?

Mr. RAKER. It means that Congress did not think to say that at all.

Mr. SABATH. That is what it means, that it shall be uniform as to States and as to people, but it can not take away from Congress the power to legislate.

Mr. BOX. Has Congress any power that is not given it by the Constitution?

Mr. SABATH. No; it has not, but it has the power of naturalization.

Mr. BOX. Where do you get it?

Mr. SABATH. Right here in the Constitution.

Mr. BOX. But that is "to establish a uniform rule."

Mr. SABATH. To establish a uniform rule of naturalization, namely, there shall be no exceptions made as to States or as to people.

Mr. BOX. I am inclined to take Judge Raker's view of it. I had reached a conclusion that was a matter of policy, but I am indebted to him for this important suggestion.

Mr. FREE. I think it is going to open the door to a lot of vicious legislation if we naturalize people in this way. That is my personal view. Hereafter I think it will be my policy to vote against any special naturalization bills.

Mr. SABATH. In four years we have only passed six bills.

The CHAIRMAN. We are not loaded with such bills. We have before the committee in each Congress two or three special naturalization bills. I believe, however that a dozen or more bills would be offered this session if Members thought they could get them out of this committee. You will notice that, as a rule, these bills have come to us after being passed in the Senate.

Mr. SABATH. Judge Raker searched the record, and he goes back to the Sartoris case.

Mr. RAKER. The librarian could only find two. These last cases they did not get because they had no index.

Mr. RAKER. This is what the Department of Labor says. I wrote to all the departments on the matter.

DEPARTMENT OF LABOR,
Washington, D. C., May 13, 1921.

MY DEAR MR. RAKER: In the absence of the Secretary your letter of the 9th, with reference to House joint resolution 34 for the naturalization of Emil S. Fischer, has come to me for reply.

The question you propound, of course, is essentially one of law, and it is possible that the Attorney General may have passed upon the question. I find upon investigation that the Bureau of Naturalization, so far as it has had occasion to form an opinion on the question, has held the belief that the Congress of the United States is probably without power to naturalize an alien. Section 8 of Article I of the Constitution, as quoted in your letter, in very simple language gives Congress the power "to establish a uniform rule of naturalization," and that seems to be the limit of power vested in Congress. It might well be that Congress might establish the rule that aliens shall only be naturalized by act of Congress. It is clear, however, that whatever the rule is it must be uniform. Congress having established by statute well-defined rules for naturalization it would seem that it had exhausted its power on the subject. It does seem to this department that when naturalization is to be had by the processes set up by statutes enacted by Congress and thereupon Congress naturalizes some one, or attempts to do so by joint resolution, that the provision of the Constitution of a uniform rule is violated.

Historically considered this department is unable to ascertain that the subject has ever reached any of our courts for consideration. It never has reached the Supreme Court of the United States. It would also appear that this practice of naturalization by congressional action finds its original precedent in the naturalization of Mrs. Sartoris, who was before her marriage Nellie Grant, daughter of Gen. Grant. A strong appeal was made at that time based upon sentiment and Congress acted. It appears that that action has been taken as a precedent ever since.

From an administrative standpoint this department, of course, feels that it is wise that there shall be a uniform rule of naturalization. Injurious consequences may result from establishing the practice of nonuniform rules, but the practice is still more dangerous, it seems to this department, when we consider that extended indulgence in this practice may involve great property rights and great human rights some day should the question reach the courts and the decision of the court should result in declaring many people aliens who had proceeded in the belief that they were citizens.

Very sincerely, yours,

E. J. HENNING,
Assistant Secretary.

Hon. JOHN E. RAKER,
Washington, D. C.

I wrote to the Department of Justice, and if you desire, I will read that letter. They are very discreet on the matter, and naturally so. The letter is as follows:

DEPARTMENT OF JUSTICE,
Washington, D. C., May 14, 1921.

Hon. JOHN E. RAKER,
House of Representatives.

MY DEAR MR. CONGRESSMAN: I beg to acknowledge your letter of the 9th instant, inclosing a copy of House joint resolution 34, Sixty-seventh Congress, first session, providing for the admission of Emil S. Fischer to the rights and privileges of a citizen of the United States. You request such information as the department may feel at liberty to give with respect to the right of Congress to deal with the subject matter, in view of the constitutional provision (Art. I, sec. 8, cl. 4) that Congress shall have power "to establish a uniform rule of naturalization * * *."

I regret to say that the authority of the Attorney General, as you doubtless know, to give official opinions is restricted to such questions as may be submitted to him by the President or the head of an executive department. For your information, however, it may not be improper to add informally that it has been repeatedly declared by the courts that the Constitution vests the power of naturalization exclusively in Congress. Instances of collective naturalization by treaty, as in the case of the annexation of foreign territory, and by statute, as in the case of the admission of a State into the Union ,are numerous. (Boyd *v.* Nebraska, 143 U. S., 135; Contzen *v.* United States, 179 U. S., 191; United States *v.* Wong Kim Ark, 169 U. S., 649.) In the last-mentioned case, the Supreme Court of the United States, at page 702, said:

"A person born out of the jurisdiction of the United States can only become a citizen by being naturalized, either by treaty, as in the case of the annexation

of foreign territory, or by authority of Congress, exercised either by declaring certain classes of persons to be citizens, as in the enactments conferring citizenship upon foreign-born children of citizens, or by enabling foreigners individually to become citizens by proceedings in the judicial tribunals, as in the ordinary provisions of the naturalization acts."

In the case of Darling *v.* Berry (13 Fed. Rep., 667), Judge Love expressed the view that when a naturalization law is made by its terms applicable alike to all the States in the Union, without distinction or discrimination, it can not be successfully questioned on the ground that it is not uniform. And in Ex parte Frank Knowles (5 Calif., 300) the Supreme Court of California, speaking with reference to this constitutional provision, used the following language:

"That the States, if they choose to exercise the power as an original one, must abide by the rule which Congress makes, there can not be the slightest difference of opinion. The power given to Congress was, according to my apprehension, intended to provide a rule for the action of the States and not a rule for the action of the Federal Government. Else why was the term 'uniform' made to qualify 'rule'? If it was designed simply to give the power of making citizens to Congress simplier modes of expression might have been used and ought to have been required, and surely there would have been no use for the term 'uniform.' Why should the rule be uniform unless more than one had to execute the rule? It certainly could not have been imagined that Congress would have made a rule for its own action or the action of its own officers which could have operated without uniformity."

That Congress has on various occasions by statute or joint resolution conferred the rights of citizenship upon individuals is a matter of public record in the United States Statutes at Large. It is suggested that the detailed information with respect to these cases can probably be obtained from the Bureau of Naturalization, Department of Labor, under the supervision of which the general naturalization laws are administered.

For the Attorney General:

R. P. STEWART,
Assistant Attorney General.

Then, the Library of Congress gives me this:

LIBRARY OF CONGRESS,
Washington, May 16, 1921.

DEAR JUDGE RAKER: In response to your inquiry by letter of May 14, we are sending you herewith a memorandum giving the legislative history of two acts of Congress conferring citizenship upon individuals. These are all that our American law section could find through the ordinary channels of research.

There is no consolidated index for the private acts of Congress, and it is very difficult to locate subject matter in them except by the laborious process of going through the individual indexes by volume. For the public acts, we undertake to keep an up-to-date subject index on cards and can make a report upon a subject of general legislation within a very short time. We have never had the facilities for doing this for the private acts.

Yours, very respectfully,

C. W. COLLINS,
Law Librarian, in charge of Legislative Reference Service.

Hon. JOHN E. RAKER,
House of Representatives.

LEGISLATIVE HISTORY OF ACTS OF CONGRESS CONFERRING CITIZENSHIP BY SPECIAL ACT.

1. Joint resolution (H. Res. 238) Fifty-fifth Congress, second session. "To readmit Nellie Grant Sartoris to the character and privilege of a citizen of the United States." (30 Stat. L., 1496, May 18, 1898.)

2. Senate bill 3419, Sixty-third Congress, first session. "Admitting to citizenship and fully naturalizing George Edward Lerrigo, of the city of Topeka, in the State of Kansas." (38 Stat. L., 1476, Feb. 23, 1915.)

1. Joint resolution (H. Res. 238) Fifty-fifth Congress, second session. To readmit Nellie Grant Sartoris to the character and privilege of a citizen of the United States. Introduced by Mr. Pearson, and referred to the Committee on

Foreign Affairs, page 4136.[1] Reported back (H. Rept. 1125) and passed House, page 4166.[1] Debated and passed Senate, page 4755.[1] Examined and signed, pages 4880, 4921.[1] Approved by the President, page 5417.[1]

2. Senate bill 3419, Sixty-third Congress, First session. Admitting to citizenship and fully naturalizing George Edward Lerrigo, of the city of Topeka, in the State of Kansas. Introduced by Mr. Thompson, and referred to the Committee on Immigration, page 5907.[2] Reported back, page 2721.[3] Debated and passed Senate, page 3114.[3] Sent to House, and referred to Committee on Immigration and Naturalization, page 3243.[3] Reported back (H. Rept. 1321), page 2364.[4] Debated and passed House, page 3530.[4] Examined and signed, pages 3696 and 3762.[4] Approved by the President [Private, No. 184], page 4447.[4]

That is all I can find on the subject.

The CHAIRMAN. Let it be made clear that three of the cases were those of women who were born in the United States and who married aliens and were restored to citizenship by an act of Congress. Then we had the George W. Nelson case. The father thought he had been naturalized, and this boy went to Annapolis as an American citizen, and it turned out that he was not. But we did not naturalize that young man by special act. We gave him the right to graduate ahead of his naturalization and held his naval rank for him until he could complete his naturalization in the regular way.

Also, there was the case of Joseph Beech, the man without a country, who had been under the jurisdiction of the United States from the time he was 4 years old, who was not a citizen of any other country. He was not entitled to immediate citizenship, and by special act the Sixty-fourth Congress gave him citizenship unconditionally.

Now, we have one other case on the House calendar, the Fischer case, which is the case of an out-and-out alien seeking this favor on account of services he has performed for the Government, American business interests, and others in China. And here comes the Huntley case. Exceptional cases come before us.

If you deny Congress the right to grant naturalization under such circumstances, what are you going to do? Would you favor enacting legislation giving the power to the courts?

Mr. BOX. That is what we have attempted to do under a uniform rule, Mr. Chairman. Take this case. I do not pretend to prejudge its merits, but I have gone over the record and find that it is practically analogous to the Fischer case. I was opposed to giving him citizenship by special act of Congress. These people have not complied with the conditions that we make other people comply with. That is the long and short of it.

Mr. RAKER. I contend that it is beyond our power to naturalize by special act, and the more I read the Constitution and the more I see its genius, purpose, and objects, the more convinced I am that the power of Congress is limited to adopting a uniform rule for naturalization, and that is judicially done.

Br. BOX. Congress is the judge of constitutional questions to no small extent itself. Congress ought not to be governed by a rule or attitude which permits it to strain the Constitution in favor of this or that. The courts allow much latitude to what Congress does on the theory that its power will be exercised in a judicious, discriminating,

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[1] Congressional Record, 55th Cong., 2d sess.
[2] Congressional Record, 63d Cong., 1st sess.
[3] Congressional Record, 63d Cong., 2d sess.
[4] Congressional Record, 63d Cong., 3d sess.

conscientions manner, with the intent to carry out the spirit of the Constitution. Even if I felt that the courts would say that by a strained construction we had the power to do it, I think that Congress ought not to go to the very limit of its power unless the public interests absolutely require it.

The States have to be governed by us as to the qualifications of their citizens to a great extent. I would be inclined to agree with my colleague here, even if it should be held that by going to the utmost limit the Constitution did permit us to do this. I am committed already to the view that Judge Raker takes, to the extent that it is not clearly within our powers and that it is an unwholesome and dangerous thing to do.

I understand there are few precedents, but I think we will have very many in the future if we begin as is contemplated now.

I remember the citizens of the State of California, quite a number of them, were before this committee not long ago, much alarmed lest the clause in the Constitution declaring the treaty-making power supreme should invade the right of the State to make its own laws governing alien land holdings in that State. They were alarmed lest the treaty-making power should sweep away that part of the constitution of the State, and I do not care to exercise any strained jurisdiction, especially when I think it is going in the wrong direction. Let us rather stay in the middle of the road and not get too near the precipice when the precipice is dangerous. Therefore, gentlemen, until some new light is shed on the subject, I think naturalization should be granted under a uniform rule.

Mr. WILSON. The contention here is that, as a general proposition, under this clause of the Constitution providing that Congres shall have power to establish a uniform rule of naturalization, the action of Congress in passing laws is limited by it.

Mr. SABATH. Of a general nature only.

Mr. WILSON. Of a general nature only on the question of naturalization.

Mr. SABATH. That is the contention of the gentleman from California, and Judge Box seems to take the same view.

(The discussion at this point became general. Mr. Cable stated his view of the subject orally. He was followed by Mr. Wilson, and on motion the committee authorized Mr. Cable, Mr. Wilson, and other members of the committee to submit briefs in lieu of oral statements made. Mr. Cable's brief follows.)

STATEMENT OF MR. JOHN L. CABLE.

Mr. CABLE. The question before Congress is as to its legal authority to grant citizenship by special act. In a very few cases Congress has attempted so to do. I question its constitutional authority.

The American Colonies, by their joint Declaration of Independence on July 4, 1776, and their victory over Great Britain subsequent thereto, became free and independent States. From that time until the adoption of the Constitution by nine of these States, on June 21, 1788, various State laws regulating the naturalization of the alien were enacted. These laws varied, as some States were more anxious than others to grant the right of citizenship to aliens and made the

process quick and easy, while others required a longer time and impressed further conditions.

The framers of the Constitution, for the purpose of remedying the evils resulting from various naturalization laws of the States, provided, in Article I, section 8 of the United States Constitution, among the other powers of Congress:

> The Congress shall have power * * * (4) to establish a uniform rule of naturalization, * * *.

The Constitution recognized citizenship in the United States, because it prescribed certain citizenship qualifications for the President, Senators, and Representatives. Citizenship, however, was never defined by the Constitution until the adoption of the fourteenth amendment, which, in part, provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

This amendment specifically limits citizenship to two sources or methods: (1) By birth in the United States and subject to the jurisdiction thereof; or (2) by process of naturalization.

The provision in the fourteenth amendment that persons born in the United States must be "subject to the jurisdiction thereof" excludes from the privilege of citizenship by birth (*a*) children born of diplomatic, consular, and other accredited representatives of foreign countries while representing their respective countries and residing in the United States; (*b*) children born of alien enemies in a state of active warfare against this Nation, said birth occurring within its territorial limits; (*c*) certain children born of members of Indian tribes.

I. CITIZENSHIP BY BIRTH.

To interpret and define citizens by birth, Congress enacted a law April 9, 1866 (14 Stat., 27; R. S. 1992), which provides:

> All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States.

The first Congress that assembled after the Constitution became effective, passed an act (1 Stat. L., 103), entitled "An Act to establish an uniform rule of naturalization," and provided, in part:

> And the children of citizens of the United States that may be born beyond sea or out of the limits of the United States shall be considered as natural-born citizens.

This is now carried, in modified form, in section 1993, 1 Comp. Stat. 1901, page 1268, which provides:

> All children heretofore born, or hereafter born, out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States. (R. S. 1878, p. 350; 1 Comp. Stat., 1901, p. 1268.)

This law can not strictly be called a uniform rule of naturalization; neither can it be called a declaration or definition by the United States Congress as to who are citizens, but is rather a combination of both. The authority to pass the law can consistently be

said to exist under the authority of Congress to establish a uniform rule, but the law was passed more for the protection of these children born abroad of American parents, the idea being to leave no doubt in the minds of foreign countries that the United States Government considered such children born abroad to be citizens and entitled to the protection of this country. The first act called them "natural born citizens," while the revision in the Revised Statutes form holds them as "citizens."

II. CITIZENSHIP BY NATURALIZATION.

The second method of acquiring citizenship in the United States is by naturalization under the uniform rule. Congress, when it passed its first act to establish the uniform rule of naturalization March 26, 1790, 1 Statutes at Large 103, divided the rule into various classes; the first being with reference to aliens who had resided within the jurisdiction of the United States a certain length of time; the next as to the children of such persons so naturalized dwelling in the United States; and the third class being children of citizens of the United States born abroad. This act is now repealed.

Since then Congress has divided the uniform rule into various classes, which may be described as follows:

(A) BY JUDICIAL PROCEEDINGS IN STATE, FEDERAL, AND TERRITORIAL COURTS.

This is the method whereby a large portion of aliens become citizens of the United States. The records, however, show that for every alien naturalized through our courts there are 1.125 aliens naturalized because of being either the wife or children of such alien coming within the other necessary requirements of the law.

The requirement is that aliens who have resided in the United States and at the end of such five-year residence hold declaration of intention, which declaration is at least two years old, may be granted letters of citizenship, provided they have attained the age of 21 years. A petition in writing is filed in the court, a hearing is held, and if the Government after examination believes he or she is a proper person to become a citizen the oath of allegiance to this country is administered and such person also absolutely and entirely renounces and abjures all allegiance and fidelity to their foreign sovereign and also takes the oath that he or she will support and defend the Constitution and laws of the United States as against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

(B) CITIZENSHIP BY MARRIAGE.

The act of February 10, 1855, provided that an alien woman who marries a citizen of the United States shall, by virtue of such marriage, be deemed in her own right to be a citizen. This was reenacted in section 1994 of the Revised Statutes, which provides:

> A woman who is now, or may hereafter be, married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen. (1 Comp. Stat., 1901, p. 1268.)

(C) CHILDREN BECOME CITIZENS BY NATURALIZATION OF PARENTS.

The act of April 14, 1802, also provided that any children who are under 21 years of age and are dwelling in the United States at the time of the naturalization of their parents, are, by reason of such fact, also made citizens of this country. Section 2172 contains this provision:

SEC. 2172. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject by the Government of the United States, may have become citizens of any one of the States, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the Revolutionary War, shall be admitted to become a citizen without the consent of the legislature of the State in which such person was proscribed. (R. S. 1878, p. 380; 1. Comp. Stat., 1901, p. 1334.)

(D) SOLDIERS, SAILORS, AND MARINES OF THE WORLD WAR.

Laws have been passed from time to time whereby any sailor, soldier, or marine who served in the military or naval forces of the United States was exempted from the general requirements of the law. And such serving during the recent World War is given certain privileges of naturalization, such as being exempt from the required residence in the United States; that the petition for naturalization can be filed in the most convenient court without proof of residence in the jurisdiction of such court. These privileges are found in subdivision 7 of section 4 of the present naturalization laws.

(E) CITIZENSHIP GRANTED TO CERTAIN INDIANS.

An act of Congress February 8, 1887 (24 Stat., 388), entiled "An Act to provide for the allotment of lands in severalty to Indians on the various reservations and to extend the protection of the laws of the United States to the Indians, and for other purposes," provided, in part, for the naturalization of Indians. Section 6 of the act, so far as applicable, is as follows:

Every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act or under any law or treaty * * * is hereby declared to be a citizen of the United States and is entitled to all the rights, privileges, and immunities of such citizenship.

So, also, it is provided that every American Indian who served in the Military or Naval Establishments of the United States during the recent war has the right to go before a court of competent jurisdiction and be made a citizen without affecting the property rights, individual or tribal, of any such Indian or his interest in tribal or Indian property. (Public Law No. 75, 66th Cong.)

III. CITIZENSHIP BY TREATY.

The acquiring of citizenship by means of treaty entered into by and between the United States and a foreign country is best ex-

plained by Judge McAllister in the case of Tobin *v.* Walkinshaw (1 McCall, 186 at 192), wherein he states:

> By a principle of international law, on a transfer of territory by one nation to another, the relations of the inhabitants toward each other undergo no change; but their relations with their former sovereign are dissolved and new ones between them and the Government which has acquired their territory are created. The same act which transferred their territory transfers the allegiance of those who remain in it, and the law which may be denominated political is changed. (American Insurance Co. *v.* Canter, 1 Peters, 542.) This right to change the political relations of the inhabitants of a ceded territory arises out of the character of those relations as recognized by the law of nature and nations. Birth binds man by the tie of natural allegiance to his native soil, and such allegiance gives, by the principles of universal law, to the country in which he was born, rights unknown to mere voluntary or statutory allegiance. Upon the right to transfer this natural allegiance has been ingrafted this right of election in the party whether he will retain his allegiance to his old sovereign or pay allegiance to the new. (H. Docs., vol. 72, No. 326, pp. 155, 156.)

The authority of making citizens by virtue of treaty is found in Article VI of the Constitution, which provides:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

France ceded or sold Louisiana to the United States and provision was made whereby the inhabitants would eventually become citizens of the United States. Section 3 of the treaty for the cession of Louisiana, concluded, ratified and proclaimed October 21, 1803, provided:

> The inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of the rights, advantages, and immunities of citizens of the United States; and, in the meantime, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

So also when Florida was acquired by the United States the treaty permitted the inhabitants to become citizens of the United States. The sixth article of the treaty provided that the inhabitants of the ceded territory—

> shall be incorporated in the Union of the United States as soon as may be consistent with the principles of the Federal Constitution and admitted to the enjoyment of the privileges, rights, and immunities of the citizens of the United States.

Treaties with Indian tribes have permitted such members as chose to remain behind on the removal of the tribes to the west, to become citizens. By these treaties these individuals are privilieged to file their declaration in a United States court, and upon satisfactory proof may become citizens. For example, see the following treaties: Cherokee (7 Stat., 159, 483), Choctaws (7 Stat., 211, 335), Wyandots (10 Stat., 1159), Pottawatomies (12 Stat., 1192; 14 Stat., 763), Ottawas (12 Stat., 1237).

IV. ADMISSION OF STATEHOOD IN THE UNION.

When an organized Territory is admitted by Congress to statehood on an equal footing with the original or other States, the citizens of

that Territory acquired full rights of citizens of the United States. This does not mean, however, that those who were aliens in such Territory became citizens, because the rule as stated in 11 C. J., 782 is:

> But while those who were citizens of the State become citizens of the United States, aliens are relegated for naturalization to the laws of the United States on that subject.

Congress has full authority, not under the uniform rule but under other sections of the Constitution, to provide for the granting of citizenship to the aliens of such Territory. Article IV, section 3, paragraph 1 of the Constitution provides:

> New States may be admitted by the Congress into this Union.

Section 2 of the same article also provides:

> The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

So also the Constitution provides, Article IV, section 2:

> The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

In the case of many of the Western States the inhabitants were already citizens as they had colonized such territory after becoming citizens of other States.

In the case of Boyd *v.* Nebraska (143 U. S., 135) the question arose as to the citizenship of Boyd who had received a majority of the votes at an election, and the court in the opinion held:

> That Congress has the power to effect a collective naturalization on the admission of a State into the Union and did so in the case of Nebraska.
>
> That the admission of a State on an equal footing with the original States involves the adoption as citizens of the United States of those whom Congress makes members of the political community and who are recognized as such in the formation of the new State with the assent of Congress.

On page 162 the court states:

> Naturalization is the act of adopting a foreigner and clothing him with the privilege of a native citizen * * *.

There is a distinction between the rights of residents of Territories acquired by the United States under a treaty with a foreign nation and the residents of other Territories. Nebraska was carved out of the Louisiana Purchase from France in 1803, and by virtue of the treaty the inhabitants of the Territory, when admitted to statehood, were entitled to the rights of citizenship. This section applies particularly to citizens of Territories not acquired by treaty.

V. NATURALIZATION BY SPECIAL ACT.

In 1898 Congress, by a joint resolution, readmitted to citizenship the daughter of Gen. U. S. Grant. She had married a British subject named Algernon Sartoris in 1874 and resided in England until his death in 1896, when she returned to the United States.

This act of Congress was not necessary, because, by an agreement between the United States and Great Britain, May 13, 1870 16 Stat., 775), it was provided:

> Citizens of the United States of America who have become or shall become and are naturalized according to law within the British dominion as British

subjects shall * * * be held by the United States to be in all respects and for all purposes British subjects and shall be treated as such by the United States.

But in the same agreement it is also provided in article 3 that—

If any such citizen of the United States, as aforesaid, naturalized within the dominions of Her Britannic Majesty, should renew his residence in the United States, the United States Government may, on his own application and on such conditions as that Government may think fit to impose, readmit him to the character and privileges of a citizen of the United States, and Great Britain shall not in that case claim him as a British subject on account of his former naturalization.

In my opinion, Mrs. Sartoris, by filing her application, could be readmitted to the privilege of citizenship, and the act of Congress was not necessary; but it can be said that it did not act under the uniform rule of naturalization, but by virtue of said treaty.

Other acts of Congress, such as the act of April 14, 1802, providing for the admission of aliens who were residing in the United States before January 29, 1795, upon proof of two years' residence in this country, or the provision relating to all persons born in the district of the country formerly known as the Territory of Oregon, were made citizens in the same manner as if born elsewhere in the United States, or on the annexation of Hawaii, all dealt with a class of persons and not an individual, and could not be said to be naturalization by a special act of Congress.

CONCLUSION.

Congress has authority, under the uniform rule, to pass a law applicable to a class of persons, so long as it is uniform to that particular class, but no authority exists to pass a special act on behalf of any one person. Congress can not act without the authority incorporated within the Constitution. It might pass a law stating that all persons who desired to become citizens of the United States and filed their declaration in a court of competent jurisdiction, and then because of being missionaries can not reside for the required length of time within the United States, that such persons may, under certain rules and regulations, return to the United States five years after filing such declaration and be permitted to take their examination for citizenship. Such a rule would apply to all those within the class and not be a special act.

Mr. Huntley's case is most meritorious. Under the statement of facts, if legal authority existed, he should have the unanimous support of the committee, but such naturalization proceedings are by special act. It would not be a uniform rule; no authority exists under the Constitution, or any treaty, whereby Congress can so act, and, therefore, the committee can not consistently report out such bill.

Mr. RAKER. May I add this, as bearing upon the question above, and then I am through. The acts referred to and submitted for the record, as the one before the committee, simply provide that they shall be admitted to all the rights and privileges of a citizen of the United States. There is no oath of allegiance required, there is no renouncing of their former allegiance to a king or potentate, what it might be, and none of the requirements of the act which you just read, Mr. Cable, which requires that a man may be naturalized in that way only, and this changes that method of naturalization and

just simply says that he is admitted to all the rights and privileges of a citizen of the United States.

Mr. WILSON. Let us hear Mr. Chalmers.

The CHAIRMAN. Without objection, we will hear Representative Chalmers, who may briefly state his case for Dr. Huntley.

STATEMENT OF HON. W. W. CHALMERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO.

Mr. CHALMERS. I can not say anything on this subject that you are discussing.

The CHAIRMAN. If you desire, we would be glad to hear you.

Mr. CHALMERS. As a Member of the House, I have the right to say it if the case gets in there, and will set up some reasons why public policy might justify the granting of citizenship in such a case as this.

The CHAIRMAN. That is following, of course, the action of this committee in reporting such a bill, and the action of Congress itself in passing it.

Mr. CHALMERS. I want to say, Mr. Chairman and gentlemen, that I do not think a case of this kind should be shut out because of the bother or the time or the danger of others following, when we take an hour and a half, as we did yesterday, in donating 3,000 acres of canyon land to a county in Wyoming, or when we take the time of Congress necessary to pass a joint resolution authorizing the construction of a bridge across a river.

The CHAIRMAN. But Congress has to do those things. That has nothing to do with it at all. It requires an act of Congress to bridge an interstate stream. Congress, if it wants to, can devote a solid week to eulogy.

Mr. CHALMERS. I understand that, but I want to say that here is a man who has an opportunity, if Congress confers it upon him, of building up good will for this country in the Orient. I can not measure the value of what this man might do if he were made an American citizen, and I will not go into that now. You want a brief statement.

George A. Huntley was born in Bristol, England, in 1865, and is now past 55 years of age. He graduated from college and a theological seminary in London, and came to this country when he was 29 years of age, and has been an American citizen since, so far as he could control it. He attended the University of Vermont and a college in New York, and graduated in medicine in Harvard. He graduated in medicine in Vermont University, and in 1897 he joined the American Baptist Foreign Missionary Society, when he was 32 years old. They sent him to Hanyang, in central China, and he was there for 17 years. He associated with the American consular officials, and his sympathies and interests have been with the United States ever since he landed in this country. He has upheld in the Orient American ideals and interests and those of American citizens. Here is a quotation from his letter:

> I have never been resident in this country sufficiently long to take out the usual papers, and I am hoping there may be some other way, perhaps by "special act of Congress," by which this desire may be realized.

Mr. Chairman, there is not a member of this committee who would advise Dr. Huntley, a cultured, educated man, a graduate of college, with the degrees of bachelor of arts and master of arts, a graduate of theological schools of this country, a graduate of medicine—there is not a man on this committee who would advise him to take five years out of his life's work to reside in this country long enough to become an American citizen.

Mr. CHALMERS. Dr. Huntley was here on a short furlough in 1904 and again in 1911 and 1912.

The CHAIRMAN. I believe he was before this committee at that time, perhaps not with a bill in his behalf.

Mr. CHALMERS. During those two years, in 1911 and 1912, he was doing some deputation work with the Baptist Board of Promotion. He wants to return to China in August, and he wants to go as a citizen of the United States to the United States consular district of Hankow. He is well known to United States Consuls Childs, Wilcox, Martin, Green, Arnold, now United States commercial attaché, and Consul Cunningham. This, again, is from Dr. Huntley:

Since 1914 we have been stationed in Shanghai as professor and physician in the Shanghai Baptist College. I am well known in Shanghai by Consul Sammons (recently left) and by Judge Lobingier, of the United States Court for China. I have been a member of the American University Club in China for many years and have in other ways been identified with American interests.

My sympathies and interests have been with this country for many years, and it has been a matter of great regret to me, as it has been to my wife, that we have not been able to live in the United States long enough to become naturalized in the routine way. We have, however, lived for many years in an American atmosphere and community and in an American consular district—

I might say that Dr. Huntley married an American woman—

I have a wife and seven children, all of them strong and healthy, physically and mentally—two girls and five boys. Our oldest, Evangeline, was born in New York; the others were all born in China. Our oldest child graduated from Oberlin College last summer and has since married one of the professors of the same institution, thus receiving her citizenship through marriage. Three other boys are in college. Our oldest boy, Ralph, was in the United States Army during the war, though he never reached overseas. All our children are being trained in American ideals.

My wife and I have for many years done our utmost to uphold American ideals and promote American interests in China, and hope to continue so to do, but this would be more effective as well as being more congenial if we can be granted American citizenship, etc.

Now, he has some letters from some of the leading citizens of this country, who know him and know of his work, his standing, and value. For instance, G. L. Estabrook, of Philadelphia; W. H. Alexander, Department of Agriculture, Columbus, Ohio; Henry Church King, president Oberlin College, knows him personally and has written a very strong letter, which I will submit for the consideration of the committee; Edward I. Bosworth, dean of Oberlin College; W. H. Franklin, George B. Huntington, Gilbert W. Brink, Ralph L. Cutter, J. Y. Attchison, and W. S. Mattoon, president of the American Baptist Society, president of a railway company, and other important citizens of the United States, who have known this man and know his work, know the work he is doing over there, and know that the value of his work would be enhanced for the good of this country and its interests if he might become an American citizen.

Mr. CABLE. Mr. Chalmers, do you know him yourself?

Mr. CHALMERS. No; I do not.

Mr. FREE. May I ask Mr. Chalmers how he happened to be interested in the case?

Mr. CHALMERS. We have a strong Baptist society in Toledo, Ohio, and Mr. Rhoades, of Rhoades & Rhoades, wrote me that the Baptists of my district are praying that this man may be granted American citizenship, and if the Baptists up there are praying for it I am going to do all I can to put it over.

Mr. CABLE. You would have no objection to amending this bill by requiring that he declare his intention to become a citizen of the United States and also renounce his allegiance to any foreign potentate?

Mr. CHALMERS. Yes; I think that is a good suggestion. I would like to have that done.

Mr. RAKER. Now, Mr. Chalmers, just tell the committee what are the prime reasons for his naturalization by a special act of Congress, even supposing Congress has the power to naturalize him.

Mr. CHALMERS. He wants to become an American citizen.

Mr. RAKER. The law authorizes him to become an American citizen now under the law.

Mr. CHALMERS. By staying here five years.

Mr. RAKER. We have made the law uniform, as far as it goes, in regard to naturalization. What is the particular reason he should be taken out of that, and a special act of Congress passed in his favor?

Mr. CHALMERS. I will answer that in this way, that if this man, at the age of 55, would stay about here and would give up the work he is doing over there in China as a professor and head of a medical college, and thereby cause the loss of probably a good many lives during that time, I would not vote for his American citizenship, because I think he would be derelict as to his duty. You know the temptation of that young Jew, when he was led into captivity, and the king wanted him to stay and take a high office in his court. The king sent his tempter to him in order to offer him the position, and then he spoke of his young wife back home who wanted to see him, and he said that if he would only yield to the king he could go back and stay with her, and he said to the tempter, "It is not her husband who would go back to her if I would yield to your temptation; it would be another man." And I think that if Dr. Huntley would stay in this country for five years and neglect his duties in China, he would not be Dr. Huntley; he would be another man.

Mr. RAKER. Tell the committee what are those pressing, important and vital duties of Dr. Huntley that overweigh his complying with our naturalization law in order to obtain the high privilege of becoming a citizen of this country?

Mr. CHALMERS. He is a professor, a missionary, preacher, and doctor in a foreign missionary district.

Mr. RAKER. You can get other missionaries to take his place, you can get other doctors to take his place, you can get other preachers to take his place.

Mr. SABATH. But they would not be in the same position that he would be in, on account of his large experience and knowledge of conditions, and you believe that he would be of tremendous value

over in China, and be able to do a great deal for humanity as well as for our Nation?

Mr. CHALMERS. Yes, sir.

Mr. SABATH. And that is the reason you are interested in having him become an American citizen?

Mr. CHALMERS. That is it.

Mr. SABATH. And for the further reason that some of his children were born here and are American citizens, and in addition thereto, all these children are attending colleges and universities in this country, and it is his aim and ambition to become an American citizen?

Mr. CABLE. I would suggest that the merits of this case are just as good as the Fisher case.

Mr. RAKER. Well, one question, Mr. Chairman, in response to Judge Sabath's question. You have not told us yet, Mr. Chalmers, the tremendous benefit that Dr. Huntley is to the United States by remaining in China and not complying with our naturalization law. Just what they are? I can not get that.

Mr. CHALMERS. I can not answer that in detail, Judge Raker.

The CHAIRMAN. Well, the letters show that he is the representative of an American Baptist Society, and is a man of the highest caliber. Then, of course, his daughter is an American.

Mr. RAKER. That is the execption I take to it. I can not concede, Mr. Chalmers, that because a man has an education, because he is a graduate of a college, and because he is acting as a minister, or a doctor, or an evangelist, that he should have any more rights than the man upon the streets, under our laws, can you?

The CHAIRMAN. He does not.

Mr. CHALMERS. I think I have said that I do not know all the details about this individual case, but only in a general way through letters I have had from some people that I know. I know Dr. King, the president of Oberlin College, and I know Dr. Bosworth very well personally, and I believe this Dr. Huntley might perhaps save several lives in China that the man on the street or some one else sent in his place perhaps might not save. I believe that answers your question.

Mr. RAKER. No; it does not. I am not putting him in his place. I am trying to get the distinction. This is the crux of the matter. Because a man is following any particular profession, or because he is a graduate of a college, should not give him any more rights and privileges than any other citizen without those advantages.

Mr. CHALMERS. Admitted.

The CHAIRMAN. We all admit that.

(Whereupon the committee went into executive session, after which it adjourned.)

COMMITTEE ON IMMIGRATION AND NATURALIZATION,
HOUSE OF REPRESENTATIVES,
Washington, Friday, June 3, 1921.

The committee this day met, Hon. Albert Johnson (chairman) presiding.

STATEMENT OF HON. W. W. CHALMERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO—Continued.

The CHAIRMAN. The committee will be in order. Let me state the occasion of the meeting. The committee considered on May 17, 1921, House Joint Resolution No. 79, a resolution admitting Dr. George A. Huntley to the rights and privileges of citizenship, and upon the raising of objection to the consideration of the bill by Judge Raker a considerable discussion ensued, which resulted in briefs being prepared for the committee by Representative Cable and Representative Wilson. The hearing is called this morning to conclude the discussion of that question. Representative Chalmers, who introduced the resolution, is present and desires to make a further statement.

Mr. CHALMERS. My statement is as follows:

Mr. Chairman and members of the committee, the matter under discussion is as to whether or not Congress has the power to make any one a citizen of the United States by special act.

Congress has such power because the whole subject of naturalization is inherent in Congress. The initial step and the final determination rest with Congress. Congress has original and final jurisdiction over naturalization.

The Constitution of the United States outlines the stated or direct powers of Congress, the prohibitions of Congress, and what may be called the implied powers of Congress.

I mean by the implied powers of Congress, powers not specifically prohibited and which in the opinion of Congress would be for the general good. Such powers come to Congress directly from the people as expressed in the preamble to the Constitution, "We the people of the United States * * * promote the general welfare."

My contention is that if it may be shown that it is for the public good and that it would "promote the general welfare" of the interests of the United States that Congress has power to confer citizenship upon Dr. George A. Huntley.

I claim that Congress has the constitutional right to pass this special act because of—

1. The implied power referred to above in the preamble; and

2. The stated power in Article I, section 8, fifth paragraph "* * * to establish an uniform rule of naturalization"; and

3. The last paragraph in Article I, section 8, "* * * to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

It is evident that this paragraph would stop at "foregoing powers" if the Congress of the United States did not have authority vested in it by the so-called implied powers.

In the case of Boyd *v.* Nebraska, 143 U. S., 135, the question arose as to the citizenship of Boyd, who had received a majority of the votes at an election for a certain office and the court rendered the following opinion:

That Congress has the power to effect a collective naturalization on the admission of a State into the Union, and did so in the case of Nebraska.

That the admission of a State on an equal footing with the original States involves the adoption as citizens of the United States of those whom Congress makes members of the political community, and who are recognized as such in the formation of the new State with the assent of Congress.

On page 162 the court states:

Naturalization is the act of adopting a foreigner and clothing him with the privilege of a native citizen.

That is, leaving out the unrelated matter, the decision of the court reads:

That Congress has the power * * * of adopting a foreigner and clothing him with the privileges of a native citizen.

I maintain that if, according to the ruling of this court, Congress has the power of collective naturalization, Congress certainly would have the power of individual naturalization.

Now, as to the Hon. John L. Cable's claim that the power of Congress with reference to naturalization is limited to the establishment of a uniform rule, I offer the statement that Congress has the power to adopt the following uniform rule:

Citizenship may be acquired—

1. Because of having been born within the United States and subject to the jurisdiction thereof.

2. Indians covered by the act of February 8, 1887 (24 Stat. p. 388), entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations and to extend the protection of the laws of the United States to the Indians, and for other purposes."

3. By the authority of treaties entered into by the United States and foreign countries whereby the United States acquires certain territory wherein proposed citizens reside.

4. By collective naturalization.

5. By special act of Congress naturalizing the individual.

If Congress were to pass a law confining naturalization to those five points, including the point of a special act of Congress naturalizing the individual, if the above five cases were embodied in a general law, it would, I believe, come under the constitutional provision set up in Article I, section 8, referred to as the uniform rule.

If Congress has that power to establish such an uniform rule, then Congress would have the power without such a rule and without such a law to make an individual a citizen by special act.

Dr. George A. Huntley is a man of high character, good education, and pleasing personality; he has been officially connected with the American Foreign Mission Society since 1897; he is a graduate of colleges and universities in England and America. He holds not only literary degrees from these universities but he is also a licensed, practicing physician.

In his statement Dr. Huntley says:

I am a professor and physician in an American school for Chinese—the Shanghai Baptist College—with more than 400 students where citizenship will help materially in inculcating American ideals. I return to China for my fifth term of service, sailing from San Francisco August 23. I am anxious for a decision as soon as possible so as to prepare the necessary passports which I hope will be issued from Washington.

You will find in your committee files strong letters of indorsement and recommendations from some of the leading citizens of this country, including:

James H. Franklin, of New York City, foreign secretary of the American Society; Dr. Henry Churchell King, president of Oberlin College; Dr. Edward I. Bosworth, dean of the graduate school of theology, Oberlin College; Dr. G. L. Estabrook, 321 Chestnut Street, Philadelphia; W. L. Matoon, real estate and tax agent of the Hocking Valley Railway Co.; Hon. Frank B. Willis; John Y. Aitchison, general director of the Central Board of Promotion, New York City; Ralph L. Cutter, of New York City; Gilbert M. Brink, D. D., general secretary of the American Baptist Publication Society, of Philadelphia; Robert Hughes, district superintendent of the Ohio Baptist Convention; James R. Hopley, State senator, of Bucyrus, Ohio; George B. Huntington, treasurer of the Baptist Missionary Society, of New York City; and W. H. Alexander, meteorologist, United States Weather Bureau, and others.

President King, of Oberlin, expresses my feeling about the importance of this bill in his letter of the fifth of last month (May). I therefore take the liberty of submitting his opinion to you. It is as follows:

Hon. W. W. CHALMERS,
House of Representatives,
Washington, D. C.

DEAR SIR: I have just learned that you are introducing in Congress a resolution admitting Dr. George A. Huntley, of the field force of the American Baptist Foreign Missionary Society to American citizenship.

I wish to express my earnest hope that the resolution may be passed, for I believe Dr. Huntley to be in every way worthy of being made a citizen of the United States. His American medical training, his long connection with an important American society, and his distinguished service for that society, his strong American sympathies and interests, and his conspicuous ability to be a representative American citizen in China make his case a notable one, and one deserving exceptional treatment.

I cite below a list of six cases where Congress has acted and made individual citizens of the United States.

Nellie Grant Sartoris, May 18, 1898, House joint resolution 238, Fifty-fifth Congress, second session.

George Edward Lerrigo, of Topeka, Kans., Senate bill 34 19, Sixty-third Congress, first session.

Joseph Beech, act of February 20, 1917, Senate joint resolution 208.

Augusta Louise De Haven-Alten, resolution 21, Sixty-sixth Congress.

Francis S. Mumm.

Mrs. Slidell, of Louisiana, widow of Confederate emissary, who was restored to citizenship.

I have here and hold up for your inspection a picture of the family of Dr. Huntley and his wife, who was a college a graduate, American born, and their seven children. Three of them are now in college, and I understand, although I will not be sure of this, that one or two of them saw service. His oldest daughter has married a professor of Oberlin College and has now become a citizen of the United States by marriage.

The CHAIRMAN. Those who have served with the military and naval forces of the United States are entitled to citizenship by reason of such service.

Mr. CHALMERS. Yes.

The CHAIRMAN. I have received a large number of letters in behalf of Dr. Huntley, some from the same persons named by Representative Chalmers, and some from others, which it is not necessary to place in the record. I think all the members of the committee concede the worth of Dr. Huntley. The question hinges on the matter which has been debated. We thank you for your statement. If there is no objection, we will hear now from Mr. Wilson.

STATEMENT OF HON. RILEY J. WILSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA.

Mr. WILSON. The question is: Has Congress the constitutional authority to naturalize an alien by special act or resolution?

In this connection it is interesting to note the various methods by which American citizenship has been or may be acquired, and it is also important to discuss these methods in arriving at a conclusion as to whether Congress has the authority to act in an individual case.

COLLECTIVE NATURALIZATION.

Collective naturalization results from the conferring of citizenship upon a certain people or upon particular classes of people in mass, and may be effected by the acquisition of territory, by special act of Congress, or by the admission of new States. (Van Dyne on Naturalization, p. 266). Under international law, and as an attribute of its sovereignty, any independent self-governing State or nation may acquire territory by conquest, treaty, annexation, purchase, or discovery. The status of the inhabitants of such acquired territory is fixed and determined by the nation under whose jurisdiction it may come.

In American Insurance Co. *v.* Canter (1 Peters, p. 511), Chief Justice Marshall says:

> The Constitution confers absolutely upon the Government of the Union the power of making war and of making treaty, consequently that Government possesses the power of acquiring territory by conquest or by treaty.

Also in the case of The Church of Jesus Christ of Latter Day Saints *v.* United States (136 U. S., p. 1), the Supreme Court declares:

> The power to acquire territory * * * is derived from the treaty-making power and the power to declare and carry on war. The incidents of these powers are those of national sovereignty and belong to all independent Governments. The power to make acquisitions of territory by conquest, treaty, and by cession is an incident of national sovereignty.

In the absence of express treaty stipulations the status and relationship of the inhabitants of acquired territory, under the rules of international law, are fixed by such regulations as the new sovereign may deem proper. Where new territory is acquired by virtue of a treaty, the status of the inhabitants of that territory is usually fixed by the terms of the treaty. This has been universally true in respect to territory acquired by the United States. For instance the Louisianna Purchase, Florida, the Northwest Territory, Alaska, and Texas. Where territory is acquired by treaty and no stipulations are made in the treaty as to the status of the inhabitants of that territory, then under international law the will of the acquiring

Government controls. (See Insular Cases, 182 U. S., p. 300.) This would be true where a territory is acquired by any known method, in the absence of stipulations as to citizenship in the act or agreement by which the territory was secured.

Collective naturalization may also be effected by the admission of territory of the United States into statehood. The constitutional authority for this is found in section 3 of Article IV of the Constitution, which provides that—

> New States may be admitted by the Congress into this Union.

And also that—

> The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

The point I make is that in respect to territory the power of naturalization grows out of this article of the Constitution and not the one relative to uniform rules.

Congress has also provided for the collective naturalization or the collective admission into citizenship of Indians within certain of the States. This grows out of the constitutional authority of Congress to deal with its own territory and to fix the status of the inhabitants of that territory before, upon, or after its admission to the Union.

I am of the opinion that no authority can be found in or inferred from this character of naturalization that would lead to the conclusion that Congress can by a special law clothe an individual alien with the rights and privileges of American citizenship. If such authority exists at all it must flow from the provisions of section 8, Article II of the Constitution, which provides that Congress shall have power " to establish an uniform rule of naturalization."

This provision had reference to foreigners—aliens in the usually accepted meaning of that term—and had no reference to territory then owned or afterwards to be acquired by the United States. It was the intention of the framers of the Constitution that Congress should establish uniform rules for the naturalization of aliens throughout the United States. Mr. Madison urged the adoption of a uniform rule of naturalization by the States. The various colonies had different laws and regulations in respect to granting citizenship to aliens. In some instances the desire for immigration was so great that certain of the colonies provided that full citizenship should result from landing upon their shores. So I take it that the word " uniform " has no reference to individuals or classes of peoples, but simply meant that the same law should apply throughout the Union. This authority granted to Congress has uniformly been held to be exclusive. In Minneapolis vs. Reum (56 Fed. p. 576) the Court said:

> Congress has exercised this power, established the rule and expressly declared that foreign born residents may be naturalized by compliance with it and not otherwise. This power, like that to regulate commerce among the States, was carved out of the general sovereign power held by the States when this Nation was formed and granted by the Constitution to the Congress of the United States. It thus vested exclusively in Congress and no power remained in the States to change or vary the rule of naturalization Congress established, or to authorize any foreign subject to denationalize himself and become a citizen of the United States without compliance with the conditions Congress had prescribed.

Now the question naturally arises has Congress, after establishing this uniform rule of naturalization and designating the tribunals and authorizing the machinery for carrying the rule into effect, exhausted its power in respect to that matter.

Obviously the legislative branch of the Government has so construed the constitutional grant of power. I say this for the reason that upon establishing the uniform rule for the naturalization of aliens, the authority for the administration thereof was explicitly and directly transferred to and vested in the judicial branch of the Government. The character of the courts authorized to grant decrees of naturalization was designated, and naturalization has uniformly been treated as a judicial function.

NATURALIZATION NOT A LEGISLATIVE FUNCTION.

The United States Supreme Court says:

> Naturalization is the act of adopting a foreigner and clothing him with the privileges of a citizen.

In the case of Spratt *v.* Spratt (1 Peters, p. 343) Chief Justice Marshall said:

> A naturalized citizen becomes a member of the society, possessing all the rights of a native citizen, and standing, in view of the Constitution, on the footing of a native.

A naturalization proceeding has generally been recognized as a judgment, says Chief Justice Marshall:

> The various acts upon this subject submit the right of aliens to admission as citizens to courts of record. They are to receive testimony, to compare it with the law, and to judge both upon law and fact.

So a decree of naturalization is rendered only after proof satisfactory is made to a court of record showing that the alien, upon his own initiative, has complied with certain conditions and certain formalities prescribed by a statute, after which a final judgment is rendered both on the law and the fact. Such proceeding is not the province of the legislative body.

In respect to this phase of the question it is interesting to note the case of Ruis *v.* United States, in connection with the Spanish Treaty Claims Commission (p. 141). In discussing the question as to whether or not a decree of naturalization is a judgment, I quote:

> In the refinements of legal phraseology we may find some other word that suits us better than judgment by which to call the final determinate act of a court in passing upon such proceedings, order, adjudication, decree, decision, conclusion—but the effect is just the same. The thing done and not the technical name one chooses to give it is of importance only. The validity and legality of the act done, whether by an officer or a tribunal, depends upon the jurisdiction over the subject matter and the exercise of its delegated power by a judicial body in reaching a conclusion is to all intents and purposes a judgment, whether technically so called or not. It is interesting to note that neither the Constitution nor the statute refers specifically to a judgment, and it is equally true that the acts of Congress relating to naturalization and conferring jurisdiction upon certain courts never speak of a judgment, and yet the courts of the country from the earliest decisions to the present time in innumerable cases have uniformly treated them as judgments.

So heretofore Congress has construed its constitutional authority as limited to the establishment of the rule for naturalization, and the courts have uniformly construed the granting of naturalization

as a judicial function. The governmental act which establishes and adjudges certain rights and privileges after a trial and fixes them by a judgment rendered both on the law and the fact should never be undertaken by a legislative body and belongs exclusively to the judicial branch of the Government.

It is contended that certain precedents indicate very clearly that Congress has construed the constitutional grant respecting naturalization in such a way as to authorize the clothing of an alien with all the rights and privileges of American citizenship by a special act, but my investigations have not led me to this conclusion. As stated before, the framers of the Constitution in giving Congress the power to establish a uniform rule of naturalization had reference only to foreigners and not the native-born American citizens. I do not believe that the readmission of an American to citizenship could be taken as a precedent for the naturalization of an original alien. However, the case of Mrs. Sartoris, née Nellie Grant, has usually been cited as a precedent. In this case it appears that Nellie Grant, daughter of President Grant, married one Sartoris, a British subject, and until his death resided in England. In May, 1898, Congress passed a resolution in the following terms restoring her to American citizenship. (From Committee on Foreign Affairs.)

That Nellie Grant Sartoris, daughter of Gen. Ulysses S. Grant, be, and she is hereby, on her own application, unconditionally readmitted to the character and privileges of a citizen of the United States, in accordance with the provisions of Article III of the convention relative to naturalization between the United States and Great Britain, concluded May 13, 1870.

The treaty of 1870 referred to in substance provides that a former American citizen who has become a British subject, upon renewing his residence in the United States might be readmitted to American citizenship upon such conditions as the Government of the United States might see fit to impose.

Before the passage of the act of 1907, in the case of Mrs. Daisie Annie Newman Van Buren, an American woman who had married a Dutch subject, Secretary Hay ruled as follows:

In accordance with the view the department has taken in several cases, when an American woman marries an alien her condition from the standpoint of nationality is lost in that of her husband as long as the martial union lasts. Upon its termination she may resume the nationality of her birth by returning to the United States to reside.

So in view of this it could not be contended that the resolution readmitting Mrs. Sartoris to American citizenship establishes a precedent for naturalizing a foreign-born alien by a special act of Congrass.

Under that rule Mrs. Sartoris did not need to have any act at all.

The CHAIRMAN. But that ruling would not have fitted the cases of Mrs. Mumm and Mrs. De Haven Alten, who became alien enemies.

Mr. WILSON. Mrs. De Haven's marriage had not been dissolved.

Mr. BOX. In neither case had it been legally dissolved.

Mr. WILSON. Under the act of 1907 the Department of State under Mr. Hay held that an American woman after the dissolution of marriage and returning to America could resume her American citizenship.

The CHAIRMAN. Then there was no occasion for an act of Congress in the case of Mrs. Slidell.

Mr. WILSON. Yes. That passed the House. My point is that in this uniform rule is the readmission of an American citizen when the uniform rule of naturalization deals solely with aliens.

Neither, in my opinion, does the act authorizing the President of the United States to commission George W. Nelson, midshipman at Annapolis (63d Cong.), create a precedent. This act simply provided that upon the graduation of Nelson he be permitted to take rank and commission as an ensign, although his naturalization had not been completed, and the act finally provided:

That unless the said George W. Nelson becomes a citizen of the United States on or before July 1, 1915, he shall on said date cease to be an officer of the Navy.

I am sure that all will agree that this should be construed as a special act in respect to a commission in the Navy of the United States, and did not relieve Nelson of the obligation to carry out in the proper judicial proceedings the process by which he was to be adjudicated an American citizen.

Congress has acted in other special cases, none of which, in my judgment, should be accepted as a basis for legislative action relieving an alien from compliance with the requirements and meeting the conditions resulting from the general law of Congress providing a uniform rule of naturalization under the grant of power given by the Constitution.

I am of the opinion that it was the intention of the framers of the Constitution to limit the scope of congressional action on this question to the establishment of a rule, and at the same time to curtail the power of the States by prescribing that the rule should be uniform.

Mr. CABLE. That is a very good statement.

The CHAIRMAN. Did you pay any attention to the Lerrigo case?

Mr. WILSON. Yes; I ran into that case after I had written this, and that case comes nearer to forming a precedent. Really, I think it is the only case of anything that can be found.

The CHAIRMAN. The Lerrigo case is a precedent, possibly, but not quite for such a case as the Fisher case and the Huntley case. It was a stronger case.

Mr. WILSON. Yes; the Lerrigo case is stronger than the facts upon which those other cases come.

The CHAIRMAN. Let me state, briefly, from the record, the facts in the Lerrigo case, as follows:

George E. Lerrigo, a white man, was born in Wellington, England, September 3, 1871.

In 1886, when George E. Lerrigo was 15 years of age, his father left England and brought his entire family to America, where they took up their residence in the State of Kansas that year.

In 1892, before coming of age, George E. Lerrigo made general inquiry to find out whether it was necessary for him to do anything to complete his citizenship. He was assured that his father's naturalization would include all members of the family.

Prior to the election in 1892 he registered as a citizen of the State of Kansas and voted at that election and at every successive State, county, and city election held in the State until 1909.

In 1899 he was married to Miss Annette Montgomery, a native-born white citizen of the State of Illinois.

From the year 1890 until the year 1909 he was general secretary of the Young Men's Christian Association of Topeka, Kans.

In 1909 he accepted appointment as representative of the Young Men's Christian Association of the city of Chicago and of the International Committee of North America to go out to China as a Young Men's Christian Association secretary, which he did, and resided in China in that capacity only from November, 1909, to February, 1913.

During his residence in China he continued to regard himself as an American citizen and was registered in connection with the consulates at Hongkong and Canton.

In 1911 he made application to the American consul in Hongkong for a passport to visit some of the interior Provinces, and in proof of his citizenship sent for his father's papers.

When those papers arrived and he presented them at the consulate he discovered that his father had failed to take out his second papers and fully complete his naturalization as an American citizen until six weeks after the date of his (George E. Lerrigo's) majority.

Until that time he had always supposed that he was in good faith a bona fide citizen, fully naturalized, of the United States of America.

He returned to America in March, 1913, for a short furlough, which has now ended.

He returns to his work in China on the 16th of December, 1913.

On account of his absence in China it has become impossible for him to avail himself of any of the acts or amendments to such acts which have been passed for the purpose of remedying such cases, in that the law requires that he must have been continuously resident within the United States for the five years next preceding his admission as a citizen.

For more than 25 years he has supposed that he was a bona fide American citizen. All the members of his father's family and of his wife's family are American citizens.

All his sympathies and interests are centered in American civilization and he is very anxious to be a fully naturalized citizen of the United States. He is representing American interests and civilization as an American in the infant Republic of China.

He can not take advantage of any of the means of naturalization provided under the law without giving up the work which he is doing in China and becoming and remaining a resident of the United States of America for another five years.

The accident of the fault in his father's second papers not only deprives him of his citizenship but deprives his wife of her citizenship, although she was born in America.

The only possible relief which can be given in this case is by special act of Congress.

He therefore asks Congress to take this action which alone can complete his naturalization.

Now, Lerrigo assumed or believed that he was a citizen, and in that his case differs from Fisher.

Mr. WILSON. That is a stronger case than the Fisher case or this Huntley case.

Mr. CHALMERS. It is very similar to the Huntley case. He was born in England and worked in China.

The CHAIRMAN. But Lerrigo was misinformed. He made inquiry and was led to believe that the naturalization of his father naturalized him and thereafter acted as a citizen, and had some right to secure relief from Congress.

Mr. CABLE. That does not make any difference in your opinion, because he was ignorant?

The CHAIRMAN. No. Thousands of others have been misinformed concerning naturalization.

Mr. WILSON. I reached the conclusion that in settling this controversy between the States when the National Government was being framed that it was the intention of the framers of the Constitution to place a limitation upon both Congress, to make a rule, and the State, to curtail the power of the State by making it uniform,

and as far as taking in groups in territories and in treaties that grows out of entirely another section of the Constitution. Congress has passed special acts relating to the Indians, and that grows out of other articles. The courts held relative to these cases that it grows out of the article of the Constitution giving Congress power to deal with and make rules and regulations and prescribe that as a test for the admission of States into the Union.

The CHAIRMAN. In other words, before the adoption of the Constitution, you adverted in your brief to the fact that the 13 original States had sovereign power and exercised it to naturalize aliens as each saw fit.

Mr. WILSON. Yes; and they did in the most radical manner.

Mr. RAKER. The matter was compromised by the States yielding up their power and the Federal Government being given the right to pass a general law which would be uniform in all the States with respect to naturalization.

Mr. WILSON. Yes; that is my conclusion.

Mr. RAKER. May I follow this examination, Mr. Chairman, by submitting in the record a letter from the Secretary of State, Mr. Hughes, which does not give a legal opinion but avoids it and then states the policy of the department.

(The letter, which was read by Mr. Raker, is as follows:)

DEPARTMENT OF STATE,
Washington, June 2, 1921.

The Hon. JOHN E. RAKER,
House of Representatives.

MY DEAR MR. RAKER: I have received your letter of May 9, transmitting House joint resolution 34, Sixty-seventh Congress, first session, granting the rights and privileges of citizenship of the United States to Emil S. Fischer, a native of Austria, who came to this country in 1892, declared his intention of becoming a citizen of the United States November 4, 1903, and subsequently sojourned for a number of years in China. It is understood that he is now temporarily in the United States. You inquire whether Congress can, by a resolution such as the one inclosed, "naturalize an alien through 'an uniform rule of naturalization.'"

I am informed that Congress has, in several cases, by special act or joint resolution, admitted aliens to citizenship of the United States. I understand that, in some of these cases, the committees before which the bills or joint resolutions were pending requested the advice of this department as to the lawfulness and advisability of granting the proposed naturalization, and that the department did not recommend it in any of them.

However, I find that Acting Secretary of State Polk, on February 15, 1919, addressed a letter to the Hon. John S. Burnett, then chairman of the Committee on Immigration and Naturalization, recommending the naturalization by act of Congress of Mr. Aeshag Karnig Schmavonian, and that this recommendation was renewed by Acting Secretary of State Phillips, in a letter of July 1, 1919, to Hon. Albert Johnson, chairman of the committee. The recommendation was based upon the fact that Mr. Schmavonian had for a number of years served this Government in the American Embassy and Consulate General at Constantinople and for some time, since the beginning of the war, had been on special duty in the Department of State.

In a letter of October 27, 1919, Mr. Johnson replied that the matter had been placed before the committee and that the conclusion had been reached "that inasmuch as Mr. Schmavonian is in the United States, he should proceed to secure naturalization through the regular channels." In making the recommendation mentioned the Department of State seems to have assumed that there was not constitutional impediment to granting naturalization to individuals by special act of Congress. Without undertaking to pass upon this point, I believe it to be advisable to avoid as far as possible granting naturalization to individuals by special act of Congress, especially in cases of persons who seem to be permanently established abroad. I may add that it would seem to be for Congress to

determine whether the facts and circumstances of Mr. Fischer's case warrant a departure from this rule.

Thanking you for bringing this matter to my attention, I have the honor to be, sir,

Your obedient servant,

CHARLES E. HUGHES.

The CHAIRMAN. Now, is there anything else? Did you have something to say, Mr. Kleczka?

STATEMENT OF HON. JOHN C. KLECZKA, MEMBER OF CONGRESS.

Mr. KLECZKA. The question at issue is whether Congress has exhausted its power under the Constitution to pass a private act naturalizing a citizen when it has enacted a general law of naturalization.

Section 8 of the Constitution provides that "the Congress shall have power," among other things in said section enumerated, "to establish an uniform rule of naturalization and uniform laws on the subject of bankruptcy throughout the United States."

I contend that the word, "uniform," applies to the various sections of the country and not to particular classes of residents or aliens therein.

The words in said section, to wit, "throughout the United States" appear to qualify the words "uniform rule of naturalization," and taken in this connection make the meaning apparent. In other words, Congress could not pass a rule of naturalization for one State and another rule for another State or one rule for a certain section of the country and another rule for the rest of the country. The word uniform in this section must therefore mean "geographically uniform."

Congress by enacting a general law has not exhausted its power to make exceptions to said law and has heretofore so interpreted its power. The several instances wherein Congress has conferred citizenship by special act indicate that it has reserved to itself the right to make exceptions to the general law.

Congress has passed several acts which would be a violation of the rule of uniformity if the word "uniform" was interpreted to mean other than geographical uniformity, to wit:

The act of May 6, 1882, prohibits admission to citizenship of Chinese.

The act of May 22, 1917, naturalizes declarants who served in the Naval Reserve Force in time of war.

The act of July 17, 1862, exempts honorably discharged soldiers from certain formalities in the naturalization proceedings.

The act of June 25, 1910, exempts from certain formalities aliens who erroneously believed themselves citizens.

The act of February 24, 1911, makes provision for naturalization of the wife and minor children of insane aliens making homestead entries under the land laws of the United States.

The act of May 9, 1918, validated certain certificates of naturalization where declarations were filed prior to September 27, 1906.

By the act of February 10, 1855, children born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, were declared to be citizens of the United States.

By the same act any woman who was or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen of the United States.

By the act of March 2, 1907, a child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the parent.

The aforesaid instances clearly show the power of Congress to make various exceptions to its rule of naturalization. These exceptions are no more a violation of the rule of uniformity than the granting of citizenship in certain instances by act of Congress.

In the case of Fong Yue Ting *v.* United States (149 U. S., p. 713) the court said:

As long ago said by Chief Justice Marshall, and since constantly maintained by this court:

"The sound construction of the Constitution must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the legitimate, let it

the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution. are

Where the law is not prohibited and is really calculated to effect any of the objects intrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread in legislative ground. This court disclaims all pretensions to such a power. (McCulloch *v.* Maryland, 4 Wheat, 316, 421, 423; Juilliart *v.* Greenman, 110 U. S., 421, 440, 450; ex parte Yarbrough, 110 U. S., 651, 658; in re Rapier, 143 U. S., 110, 134; Logan *v.* United States, 144 U. S., 263, 283.)

The nationality of the inhabitants of territory acquired by conquest or cession becomes that of the Government under whose dominion they pass, subject to the right of election on their part to retain their former nationality by removal or otherwise, as may be provided. (Moore's International Law Digest, vol. 3, p. 311.)

Inhabitants of the Territory of Nebraska at the time of its admission as a State into the Union, who had previously declared their intention to become citizens of the United States, were by the enabling act admitted to such citizenship. (Moore's International Law Digest, vol. 3, p. 313.)

By Article III of the treaty of April 30, 1803, by which France ceded Louisiana to the United States, it was stipulated that "the inhabitants of the ceded territory" should "be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States. By this stipulation citizenship of the United States was conferred on the inhabitants of the territory." (Moore's International Law Digest, vol. 3, p. 313.)

All persons who were citizens of Texas at the date of annexation, viz, December 29, 1845, became citizens of the United States by virtue of the collective naturalization effected by the act of that date. (Moore's International Law Digest, vol. 3, p. 314.)

By the treaty of peace between the United States and Mexico, February 2, 1848, Article VIII, it was stipulated that Mexicans who preferred to remain in the territories ceded to the United States might "either retain the title and rights of Mexican citizens or acquire those of citizens of the United States," but that they should be obliged "to make their election" within a year from the date of the exchange of ratifications of the treaty, and that those who should remain after the year without having "declared their intention to retain the character of Mexicans" should be "considered to have elected to become citizens of the United States." (Moore's International Law Digest, vol. 3, p. 319.)

Naturalization has also been regulated to some extent by treaty. The United States has concluded treaties on the subject with the following countries:

North German Union, February 22, 1868; Bavaria, May 26, 1868; Baden, July 19, 1868; Hesse, August 1, 1868; Belgium, November 16, 1868; Sweden and Norway, May 26, 1869; Great Britain, May 13, 1870; Austria-Hungary, September 20, 1870; Ecuador, May 6, 1872; Denmark, July 20, 1872; Hayti, March 22, 1902. (Moore's Int. Law Digest, vol. 3, p. 298.)

Whenever the courts of the land refer to this clause of the Constitution, to wit, "a uniform rule of naturalization, * * * throughout the United States," they refer to it as a power vested in Congress exclusively abrogating the rights of the several States to pass any naturalization laws.

In the case of Chirac *v.* Chirac (1817), 2 Wheat. (U. S.), 269, which arose under the grant of power to establish a uniform rule of naturalization, where the court speak of the power of Congress as exclusive, they are evidently merely sanctioning the argument of counsel, which placed the invalidity of the naturalization under the law of Maryland, not solely upon the grant of power in the Constitution, but insisted that the Maryland law was "virtually repealed by the Constitution of the United States, and the act of naturalization enacted by Congress." Undoubtedly, it was so repealed, and the opposing counsel in the case did not dispute it. For the law of the United States covered every part of the Union and there could not, therefore, by possibility, be a State law which did not come in conflict with it. And, indeed, in this case it might well have been doubted whether the grant in the Constitution itself did not abrogate the power of the States, inasmuch as the Constitution also provided that the citizens of each State should be entitled to all the privileges and immunities of citizens in the several States; and it would seem to be hardly consistent with this provision to allow any one State, after the adoption of the Constitution, to exercise a power, which, if it operated at all, must operate beyond the territory of the State, and compel other States to acknowledge as citizens those whom it might not be willing to receive. Per Taney, C. J., in License Cases (1847), 5 How., 585; 12 United States (L. ed.), 256. (Fed. Stat. Anno., 2d ed., vol. 10, p. 736.)

The power to establish a uniform rule of naturalization is exclusive, and the naturalization laws enacted by Congress in the exercise of this power constitute the only rule by which a foreign subject may become a citizen of the United States or of a State within the meaning of the Federal Constitution and laws. It is not in the power of a State to denationalize a foreign subject who has not complied with the Federal naturalization laws, and constitute him a citizen of the United States or of a State, so as to deprive the Federal courts of jurisdiction over a controversy between him and a citizen of a State, conferred upon them by Article III, section 2, of the Constitution of the United States, and the acts of Congress. (Minneapolis *v.* Reum (1893), 56 Fed., 581.)

The Constitution has conferred on Congress the right to establish a uniform rule of naturalization, and this right is evidently exclusive, and has always been held by this court to be so. Consequently, no State, since the adoption of the Constitution, can by naturalizing an alien, invest him with the rights and privileges secured to a citizen of a State under the Federal Government, although, so far as the State alone was concerned, he would undoubtedly be entitled to the rights of a citizen and clothed with all the rights and immunities which the Constitution and laws of the State attached to that character It is very clear, therefore, that no State can, by any act or law of its own, passed since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the United States. It can not make him a member of this community by making him a member of its own. And for the same reason it can not introduce any person or description of persons who were not intended to be embraced in this new political family which the Constiution brought into existence, but were intended to be excluded from it. (Dred Scott *v.* Sandford (1856), 19 How., 405; 15 U. S. (L. ed.), 691.)

The power of Congress was intended to be, and necessarily must be, exclusive. And, being exclusive, it can not be controlled by the unwritten or common law of one of the States any more than it can be altered by the statute law of such State. And whether or not the Constitution enabled Congress to declare that the children born here of alien parents who never manifested an intention to become citizens are aliens or are citizens—it is clear that the

decision of that question must be by some general rule of law applicable to and affecting our whole Nation. It must be determined by what may be called the national law, as contradistinguished from the local law of the several States. It is purely a matter of national jurisprudence, and not a State or municipal law. (Lynch *v.* Clarke (1844), I Sandf., Ch. (N. Y.), 646. (Fed. Stats. Ann., 2d ed. p. 737.)

State naturalization laws are superseded and annulled by an act of Congress on the subject, as the jurisdiction of Congress upon the subject is exclusive. (Matthew *v.* Rae (1829), 3 Cranch (C. C.), 699; 16 Fed. Cas., No. 9284.) (Fed. Stats. Ann., 2d ed., p. 737.)

When a naturalization law is made by its terms applicable alike to all the States of the Union, without distinction or discrimination, it can not be successfully questioned on the ground that it is not uniform, in the sense of the Constitution, merely because its operation or working may be wholly different in one State from another. (Darling *v.* Berry (1882), 13 Fed., 667.) (Fed. Stats. Anno., 2d ed., p. 738.)

From the foregoing citations, it appears that the words in the section of the Constitution granting Congress the power "to pass a uniform rule of naturalization * * * throughout the United States" mean that Congress has exclusive power to legislate on the subject of naturalization, that this power annuls the right of individual States to legislate on this subject, and that Congress has and reserves to itself the right to make exceptions to its general rule as evidenced by the various acts heretofore passed by Congress.

The CHAIRMAN. Mr. A. W. Parker, formerly law officer of the Immigration Service, who has had much experience in some of these cases and their application, is here. Will you make a statement, Mr. Parker?

STATEMENT OF MR. A. W. PARKER.

Mr. PARKER. Mr. Chairman and gentlemen of the committee, I have been very much interested in this discussion. Some of it is new to me, not having run across it before in my study of questions of this kind.

I might say this: That as a former officer of the Department of Labor, who, through being the law officer of the Bureau of Immigration, came more or less in contact with naturalization questions, I have always been of the opinion that anything that departed from the regular methods of naturalization was, as a question of policy at least, ill-advised, and so far as I had occasion, during my official connection with the department, to go into the question at all, I had come to the opinion that the power of Congress was limited to the making of a uniform rule, and that these several cases in which special action had been taken or had been sought were really outside of the powers of Congress. It seems to me the view of the matter which I take might be stated in a few words thus: To satisfy the constitutional requirement of uniformity a naturalization law, or "rule," must provide a test of general condition or conduct which if met or performed by any alien at all will result in the individual becoming a citizen. If the rule is of that nature and operates the same way throughout the various States, it is "uniform" within the meaning of the Constitution. But a law the purpose and effect of which is to select a single individual, whatever his or her virtues may be, for special admission to citizenship although that individual is not able to meet a condition or conduct test of such general

character, would seem clearly to violate the uniformity requirement. Or, to state the matter somewhat differently, any reasonable general rule of admissibility is constitutional; but every special exemption of a particular individual from the necessity of bringing himself within a general class is unconstitutional.

Now, I do not know that I can say very much to help you gentlemen. You have members here who are very much better able to speak or write on that subject than I. But there has been one phase of this naturalization proposition that I had occasion to go into some years ago, and which I think may be of some interest to you in considering this question, although it is not directly in the point.

Perhaps all of you will remember that the textbooks that discuss the question of citizenship and a great many of the decisions that discuss citizenship treat the subject as though there were three methods of acquiring citizenship—birth within the limits and under the jurisdiction of the United States, naturalization by court process under the uniform rule that consists of the naturalization act of 1906 as modified from time to time, and birth abroad to parents who are American citizens. That has led to a great deal of confusion in considering the question in different connections—I mean the confusion of the matter of birth abroad with birth within the limits and jurisdiction of the United States.

Now, I had occasion to go into that in connection with some Chinese matters. The gentlemen on the committee who are from the Pacific coast will remember that one of the principal ways in which Chinese during the last 20 years, and more particularly the last 10 years, have been getting into the United States—the Chinese laborer, I mean—notwithstanding the provisions of the Chinese exclusion law, has been through claims of citizenship. Prior to that time a great many came into the United States through the claim of citizenship by birth within the limits and jurisdiction of the United States.

Latterly that claim has been almost abandoned and we are getting the second generation. It was in connection with that problem—because it did become a problem in the Department of Labor—that I gave a great deal of study to this question of naturalization and reached the conclusion that the conference of citizenship, or acquirement of citizenship, rather, by birth abroad to parents who are citizens of this country was not a citizenship by birth at all but a citizenship by naturalization; and, therefore, arguing from that premise, Chinese who were born abroad to parents who had been born in this country could not be citizens of the United States because the laws of the United States specifically prohibit the naturalization of Chinese.

It was a rather close point. It was one which required a great deal of argument, some of which, I must confess, sounded, even to me, when I got through with it somewhat strained. But I had no difficulty whatever—and this is the point, I think, that may be of interest to you gentlemen now—in coming to the conclusion that citizenship acquired through birth abroad to American parents is a citizenship which is acquired simply because Congress has said, under the authority of the provision of the Constitution allowing is to make a uniform rule of naturalization, that birth under those circumstances would be regarded as conferring citizenship, and not because of anything that

attached to the idea of the blood that ran in a man's veins which he had gotten from his parents.

I do not know how much that may interest you or help you on this question that you have before you, but if you think it is worth while you could easily get from the Bureau of Immigration a copy of the brief I wrote on the subject. I will say, however, that the question was referred to the Attorney General and he did not agree with my brief but held to the contrary, viz, that under those circumstances the persons involved are citizens of the United States and must be admitted, and they have been admitted by hundreds since, under his opinion. Of course, naturally, I do not agree with that opinion, having written one the other way after a great deal of study and laborious effort.

Mr. RAKER. Now, Mr. Parker, right there, that is exceptionally interesting and instructive, and in connection with this word "naturalization" I wonder if it would be asking too much, Mr. Chairman, to get that brief and have it printed as a part of Mr. Parker's statement?

The CHAIRMAN. The clerk will be authorized to secure a copy of the brief and place same in the record.

(The brief referred to is as follows:)

MEMORANDUM FOR THE SECRETARY IN RE APPEALS OF WONG GIM TOON AND WONG SHING GIM.

FEBRUARY 2, 1916.

These two Chinese arrived at San Francisco on December 6, 1915. Wong Gim Toon states he was born February 13, 1892. He is therefore now about 22 years and 11 months of age. He is married and has one son. His wife and child are living in China in the same place where he was born. Wong Shing Gim gives his birthday as August 7, 1887, and he is therefore 28 years and about 6 months of age. He is single. Neither applicant has the certificate prescribed by section 6 of the Chinese exclusion act of July 5, 1884, as the sole evidence permissible to establish an exempt status under such law. Both claim the right to enter the United States on the ground that they are citizens thereof, notwithstanding their birth in a foreign country, the father of each being an American citizen by birth. The facts of the case, to wit, the citizenship of the fathers of the respective applicants and the relationship of the applicants to their respective fathers are conceded. There is the cases, therefore, nothing except the bare question of law, Are the respective applicants citizens of the United States?

The applicants have been excluded by the commissioner of immigration at San Francisco because they are not regarded as American citizens, the commissioner relying specifically upon rule 9 of the Chinese-exclusion rules approved by the Secretary of Labor and promulgated October 15, 1915. There are two lines of reasoning, upon either of which the bureau conceives that the exclusion of applicants is justifiable as a proposition of law. The first line of reasoning, that upon which the department proceeded when approving and promulgating rule 9, will first be discussed. If, upon considering these cases and hearing arguments which doubtless will be made by counsel retained to represent the Chinese before the department, the Secretary concludes that his previous decision that rule 9 is legally sound is correct, resort need not necessarily be had to the second line of reasoning hereinafter advanced; but, as doubtless the cases will be taken before the courts on the bare question of law involved (in the event that the department does not sustain the appeals), the bureau suggests the advisability of the department adopting both sets of reasons, by holding that if the first should be conceded, simply arguendo, to be unsound, the second, at any rate, is a sufficient justification in law for the action of the commissioner in excluding applicants. If this is done, the court will be able to pass upon the entire proposition and to lay down principles of law which may be adopted as a guide to the department, either under the existing rule or under an amendment thereof made to meet the views of the court.

I. RULE 9 IS LEGALLY SOUND; CHINESE PERSONS BORN ABROAD OF FATHERS WHO ARE AMERICAN CITIZENS BY BIRTH ARE CITIZENS OF THE UNITED STATES BUT ARE ALIENS.

Under rule 9 Chinese persons who have not attained a status of their own are permitted to enter the United States for the purpose of joining their father here, the latter being an American citizen by birth, upon the same principle and theory that is applied by the department and the courts to the cases of Chinese who have not attained their majority and who apply for admission to the United States with the purpose of joining their father here, the latter being a member of the exempt classes of Chinese enjoying a domicile in this country. In so treating such applicants, of course, the department denies their American citizenship, and admits them merely because their fathers, being American citizens, are entitled to have their minor dependent children with them in this country. This is the same theory upon which Chinese-American citizens are permitted to have their Chinese wives come into the country if admissible under the general immigration law. (Low Wah Suey *v.* Backus, 225 U. S., 460; Looe Shee *v.* North, 170 Fed., 566.) In the interest of completeness of presentation, rule 9 is here inserted in its entirety:

"Rule 9. (*a*) The Supreme Court having held that the lawful wife and children of a Chinese of the exempt classes may be admitted to the United States without presenting the certificate prescribed by section 6 of the act of July 5, 1884, and the theory of said judicial exception to the provisions of the treaty and laws being that the dependent members of the household of a member of the exempt classes may enter without the prescribed certificate because the husband and father is entitled to the company of the wife and the care and custody of the children, and because, such wife and children having no status of their own, to require them to present the certificate would be to attempt to exact an impossibility, the following conditions are prescribed with respect to the proof that shall be exacted in the cases of such wives and children applying for admission:

"(*b*) In every instance there shall be exacted convincing proof of the relationship asserted as the basis for admission. If the members of the household of the exempt apply in company with the latter the certificate presented by the husband or father will be accepted as sufficient to cover the members of his household. If the husband or father is domiciled in the United States evidence shall be required concerning him of the character specified by section 2 of the act approved November 3, 1893, to establish the right of a domiciled merchant to readmission after temporary absence from the United States.

"(*c*) In the absence of evidence to the contrary, it shall be assumed that a wife or unmarried daughter is a member of the household of the husband or father.

"(*d*) Male children 14 years of age or under shall be conclusively presumed to be members of the father's household. Male children 15 years of age or over and under 18 years of age shall be presumed to be members of the father's household, but such presumption shall be subject to rebuttal. Such children 18 years of age or over and under 21 years of age shall be required to prove affirmatively and to the satisfaction of the Secretary of Labor that they are members of the father's household.

"(*e*) No Chinese male 21 years of age or over shall be permitted to enter the United States otherwise than as of his own individual status and capacity as a member of the exempt classes and upon exhibition of the certificate prescribed by section 6 of the act of July 5, 1884, irrespective of whether he is or is not a member of the household of his exempt father.

"(*f*) The Supreme Court having held that a person of the Chinese race born in the United States is a citizen thereof under the Constitution, and persons of said race not being eligible to become citizens by naturalization, i. e., otherwise than by birth within the limits of the country, but citizens of this country being entitled to the company of their wives and to the care and custody of their children, upon the same theory described in paragraph (*a*) hereof, the dependent members of the household of a Chinese-American citizen may be admitted to the United States without presenting the certificate required by section 6 of the act of July 5, 1884, and the following conditions are prescribed with respect to the proof that shall be exacted in such cases.

"(*g*) In every instance there shall be exacted convincing proof of the citizenship of the alleged husband or father and of the relationship to him asserted as the basis for the applicant's claim to admission; and paragraphs

(*c*), (*d*), and (*e*) hereof shall be observed in determining whether such applicants are entitled to admission as dependent members of the husband's or father's household.

"(*h*) In the cases described in this rule the exempt status or citizenship of an alleged husband or father who is domiciled within the United States may be investigated and determined prior to the arrival of the wife or child, but no investigation regarding the claimed relationship shall be made until the wife or child arrives at a port of entry."

While under this rule and the principle and reasoning upon which same is based an American citizen is privileged to have with him here his Chinese wife and children, to that privilege necessarily attach the conditions that the wife and child, respectively, shall actually sustain such relations to the American citizen husband or father as will not merely in a technical way but substantially make them associates of or dependent upon such husband or father, and that neither the wife nor the child shall be allowed to come here in contravention of those provisions of the treaty and laws which contemplate that laborers shall be excluded and expelled from the United States. In the case of the wife, the terms of the law are clearer than in the case of the child; and, while it has been contended that such a Chinese wife acquires citizenship by marriage to an American citizen and therefore has a right in herself to enter the country, that contention has long since been overturned in the courts, which have held that such a wife, although admitted to the custody and care of the husband, may be expelled from the United States if she subsequently becomes a member of one of the classes excluded by law (Low Wah Suey and Looe Shee cases, supra).

With respect to the foreign-born child of a Chinese-American citizen, it has frequently been contended, however, that under section 1993 of the Revised Statutes such a child is himself a citizen of the United States and, therefore, entitled as of his own personal right to enter this country. Considerable confusion with regard to this question has arisen from the not altogether unnatural but nevertheless erroneous classification of textbook authors of foreign-born children of American citizens as "citizens by birth." Careful consideration of the constitutional and statutory provisions regarding citizenship in the United States will disclose that our citizens fall into two specific classes, to wit:

(1) Persons who acquire citizenship directly under the Constitution, who for convenience of terminology may be called "constitutional citizens," divided into the two subclasses (*a*), those who were citizens of the several States at the time the Constitution was adopted (Art. II, sec. 1, clause 4; United States *v.* Wong Kim Ark, 169 U. S., 649, 654), no longer of any practical consequence; and (*b*) those born within the United States, described in the Constitution as "natural-born citizens" (Art. II, sec. 1, clause 4), or as persons "born * * * in the United States and subject to the jurisdiction thereof" (Art. XIV of amendments, sec. 1), the subclass of this class still of interest and concern.

(2) Persons who acquire citizenship under the statutes passed by Congress in pursuance of the constitutional authority "To establish an uniform rule of naturalization" (Art. I, sec. 8, clause 4), who for convenience of terminology may be designated as "statutory citizens."

From the above description merely, and without any particular argument, it is apparent that the only manner in which citizenship can be acquired directly under the Constitution and therefore without the process or method being subjected to limitations by congressional legislation is by being born within the limits and jurisdiction of the United States—by being "natural-born citizens." It is also quite as readily apparent that with respect to citizenship acquired in any other manner than that just mentioned the process and method of its acquirement are absolutely within the control of Congress. This proposition is very clearly and emphatically stated in the leading decision on "constitutional citizenship" (United States *v.* Wong Kim Ark, 169 U. S., 649, 702–703), as follows:

"The fourteenth amendment of the Constitution, in the declaration that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside,' contemplates two sources of citizenship, and two only—birth and naturalization. Citizenship by naturalization can only be acquired by naturalization under the authority and in the forms of law. But citizenship by birth is established by the mere fact of birth under the circumstances defined in the Constitution. Every person born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States, and needs no naturaliza-

tion. A person born out of the jurisdiction of the United States can only become a citizen by being naturalized, either by treaty, as in the case of the annexation of foreign territory; or by authority of Congress, exercised either by declaring certain classes of persons to be citizens, as in the enactments conferring citizenship upon foreign-born children of citizens, or by enabling foreigners individually to become citizens by proceedings in the judicial tribunals, as in the ordinary provisions of the naturalization acts." (See also pp. 670 and 688.)

Whether or not citizenship has been acquired statutorily is to be determined, like any other question of statutory law, by ascertaining what Congress has enacted on the subject, construing these various enactments together so as to give effect to all or to as many of them as possible, and fitting the result of such ascertainment and construction to the facts and circumstances of the particular case under consideration. Let us, therefore, follow this course with respect to the case of Chinese born abroad to a father of the Chinese race and himself a citizen of the United States by birth.

The Constitution having created one class of citizens and having conferred upon Congress the power to create others by enacting "a uniform rule of naturalization," it follows, of course, that no particular race or class of persons can become citizens statutorily, i. e., by naturalization, unless and until Congress takes, with respect to such race or class affirmative action by passing a law authorizing their naturalization and prescribing the method by which it shall be accomplished, or describing the facts and circumstances which shall constitute it or give rise to it. Therefore, it is important, first of all, to ascertain what has been, and to give proper weigh to, the general policy of the Government of the United States with respect to conferring citizenship upon foreigners otherwise than by "naural birth," the policy in this latter regard having been fixed in advance by the terms of the Constitution.

Until the passage of the act of July 14, 1870 (16 Stat., 256), the only persons entitled under the law to become citizens by naturalization were "free white persons." By the act mentioned, and a slight amendment made thereto by the act of February 18, 1875 (18 Stat., 318), the provision specifying what aliens may be naturalized was brought into its present shape. as shown in section 2169 of the Revised Statutes, under Title XXX, "Naturalization," such section reading as follows:

"The provisions of this title shall apply to aliens being free white persons and to aliens of African nativity and to persons of African descent."

It has been held by the courts, that, under the Constitution and the laws relating generally to naturalization. a person of the Mongolian race cannot lawfully be naturalized. In re Ah Yup (decided in 1878), 5 Sawy., 155—Fed. Cas., 104; in re Cee Hop (decided in 1895), 71 Fed., 274; in re Hong Yen Chang (decided in 1890), 84 Cal., 163; in re Saito (decided in 1894), 62 Fed., 126; in re Yamashita (decided in 1902), 30 Wash., 234—the first three cases cited being those of Chinese and the last two those of Japanese aliens. See also Fong Yue Ting *v.* United States (149 U. S., 698, 716), in which the broad statement is made that "Chinese persons not born in this country have never been recognized as citizens of the United States, nor authorized to become such under the naturalization laws," citing sections 2165 and 2169 R. S., the original acts of which those sections are composed, and the acts of 1870 and 1875, above mentioned.

By Article VI of the treaty of trade, consuls, and emigration with China of 1868, it was provided that "nothing herein contained shall be held to confer naturalization upon citizens of the United States in China. nor upon the subjects of China in the United States." The treaty with China of 1880 was merely in modification of existing treaties (preamble), and in no way amended the provision above quoted from the treaty of 1868 (see Art. III). By Article IV of the convention with China of December 8, 1894 (denounced by China in 1904), all Chinese residing permanently or temporarily in the United States were guaranteed "all rights that are given by the laws of the United States to citizens of the most favored nation, excepting the right to become naturalized citizens."

By section 14 of the Chinese exclusion act of 1882 it was provided "that hereafter no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed."

The situation disclosed by the provisions of treaties and statutes above quoted is described by the Supreme Court in the Wong Kim Ark case (supra, at pp. 701–702), as follows:

"It is true that Chinese persons born in China cannot be naturalized, like other aliens, by proceedings under the naturalization laws. But this is for want of any statute or treaty authorizing or permitting such naturalization, as will appear by tracing the history of the statutes, treaties, and decisions upon that subject, always bearing in mind that statutes enacted by Congress, as well as treaties made by the President and Senate, must yield to the paramount and supreme law of the Constitution.

"The power granted to Congress by the Constitution 'to establish an uniform rule of naturalization' was long ago adjudged by this court to be vested exclusively in Congress. Chirac *v.* Chirac (1817), 2 Wheat., 259. For many years after the establishment of the original Constitution and until two years after the adoption of the fourteenth amendment Congress never authorized the naturalization of any but 'free white persons.' Acts of March 26, 1790, c. 3, and January 29, 1795, c. 20; 1 Stat., 103, 414; April 14, 1802, c. 28, and March 26, 1804, c. 47; 2 Stat., 153, 292; March 22, 1816, c. 32; 3 Stat., 258; May 26, 1824, c. 186, and May 24, 1828, c. 116; 4 Stat., 69, 310. By the treaty between the United States and China, made July 28, 1868, and promulgated February 5, 1870, it was provided that 'nothing herein contained shall be held to confer naturalization upon citizens of the United States in China, nor upon the subjects of China in the United States.' 16 Stat., 740. By the act of July 14, 1870, c. 254, paragraph 7, for the first time the naturalization laws were 'extended to aliens of African nativity and to persons of African descent.' 16 Stat., 256. This extension, as embodied in the Revised Statutes, took the form of providing that those laws should 'apply to aliens (being free white persons, and to aliens) of African nativity and to persons of African descent'; and it was amended by the act of February 18, 1875, c. 80, by inserting the words above printed in brackets. Rev. Stat. (2d ed.), paragraph 2169; 18 Stat., 318. These statutes were held by the circuit court of the United States in California not to embrace Chinese aliens. In re Ah Yup (1878), 5 Sawyer, 155. And by the act of May 6, 1882, c. 126, paragraph 14, it was expressly enacted that 'hereafter no State court or court of the United States shall admit Chinese to citizenship.' (22 Stat., 61.)

"In Fong Yue Ting *v.* United States (1893), above cited, this court said: 'Chinese persons not born in this country have never been recognized as citizens of the United States, nor authorized to become under the naturalization laws.' (149 U. S., 716.)

"The convention between the United States and China of 1894 provided that 'Chinese laborers or Chinese of any other class, either permanently or temporarily residing in the United States, shall have for the protection of their persons and property all rights that are given by the laws of the United States to citizens of the most favored nation, excepting the right to become naturalized citizens.' 28 Stat., 1211. And it has since been decided, by the same judge who held this appellee to be a citizen of the United States by virtue of his birth therein, that a native of China of the Mongolian race could not be admitted to citizenship under the naturalization laws. In re Gee Hop (1895), 71 Fed. Rep., 274."

In view of the foregoing, there can be no doubt whatever that the general policy of the United States has always been opposed to the acquirement of citizenship by persons of the Mongolian race in general, and by those of Chinese blood in particular, by naturalization, i. e., otherwise than by being born within the limits and jurisdiction of the United States.

Having seen what the general policy of the United States is and always has been with respect to conferring citizenship upon Chinese, let us proceed to the ascertainment of how the laws bearing specially upon the subject may be construed, without doing any violence to their provisions and also in conformity with said general policy.

Section 1993 of the Revised Statutes reads as follows:

"All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States."

This provision is a composite of provisions enacted on April 14, 1802 (2 Stat., 155), and on February 10, 1855 (10 Stat., 604). It will be observed, therefore, that it antedates all of the provisions of treaties and statutes bearing upon the naturalization of Chinese, to which reference has already been made, the earliest of which was contained in the treaty with China of 1868.

The purpose of section 1993 obviously was the protection abroad of children born in foreign parts to American parents there domiciled temporarily, and it would require a considerable stretch of the imagination to give it any more than the most technical application to the case of a child born abroad to a Chinese American citizen father. Cases of the latter kind contain no substantial element that would bring them within the spirit and intended purpose of section 1993. The Chinese-American citizen father has acquired his constitutional citizenship by the mere incident, or accident, of birth within the limits of this country; and both by the law of China and by his own conception of his allegiance his classification would be that of a Chinese citizen; he does not go to China, taking his wife with him and residing there in any temporary sense as though it were a foreign country, but goes there because he considers China his real home and because he desires to take unto himself a wife selected from among his own people in accordance with their own ideas of matrimony and of the family relationships, and establishes there, in what he would in the most natural and naive manner describe as his native village, it being the village of his ascendents for many previous generations, and begets and rears and educates his children, who, to every substantial purpose and intent, are citizens of the country in which born, are so regarded by that country, and are offered every protection given by it to its citizens.

The purpose in subsequently bringing such children to the United States, as might be demonstrated by thousands of cases of which the bureau has records, is not predicated upon any substantial desire that they shall enjoy the inestimable boon of American citizenship, or upon any real appreciation of the privileges, benefits, and duties of such citizenship, for if that had been the impelling motive the Chinaman residing here would not have gone to China for the particular purpose of establishing a home there, and would not have subsequently, at expense and inconvenience to himself, maintained in his "native village" his wife and children, but would have so laid his plans as to have his home and his family in the country in which he had been incidentally or accidentally born—but is predicated rather upon the desire to bring his children, after they have been reared in China in accordance with Chinese customs and ideals and educated in its language, to a place where they can engage in more gainful pursuits and be commercially of more value to their father than if they should remain in the overpopulated country of their birth. When the matter is thoughtfully and seriously considered it seems utterly preposterous that the inestimable heritage of American citizenship, the acquisition and conference of which are so carefully limited and guarded by our Constitution and laws, should be thrust upon persons who not only belong to a race, members of which are not capable of being naturalized no matter how long they have lived upon our soil or how thoroughly they may have become imbued with American ideals, but with respect to whom every indicia of desire, whether emanating from them or their responsible paternal parent, tends to show that they cherish the Chinese citizenship that is theirs because of the dual character of their status internationally, and their Chinese customs, characteristics, and associations, and have no regard for the American citizenship claimed by them or on their behalf except so far as it will be of some selfish commercial advantage to them.

With respect to the dual character internationally of the citizenship of such persons attention is directed to the opinion of Attorney General Hoar, of June 12, 1869 (13 Ops., 89, 91), from which the following is quoted:

"But while the United States may, by law, fix or declare the conditions constituting citizens of the country within its own territorial jurisdiction, and may confer the rights of American citizens everywhere upon persons who are not rightfully subject to the authority of any foreign country or government, it is clear that the United States can not, by undertaking to confer the rights of citizenship upon the subjects of a foreign nation, who have not come within our territory, interfere with the just rights of such nations to the government and control of its own subjects. If, therefore, by the laws of the country of their birth, children of American citizens, born in that country, are subjects of its government, I do not think that it is competent to the United States, by any legislation, to interfere with that relation, or by undertaking to extend to them the rights of citizens of this country, to interfere with the allegiance which they may owe to the country of their birth while they continue within its territory, or to change the relation to other foreign nations which, by reason of their place of birth, may at any time exist."

This opinion was quoted with apparent approval by the Supreme Court in the Wong Kim Ark case (supra at p. 689; see also further comment of the same character at p. 691).

To support the argument so far advanced and extend it one step further, attention should be directed to the fact that Congress was so solicitous to insure that the privilege of naturalization would not be conferred upon members of the Chinese race that it determined to supplement by affirmative legislation the legal situation already existing negatively under the Constitution and naturalization laws, and already affirmatively expressed in the treaty with China of 1868, by placing in the act of 1882 a provision specifically prohibiting all Federal or State courts from naturalizing Chinese; and it then piled on top of this specific provision one repealing all laws in conflict with said provision. Obviously, from what has already been said, this provision of the act of 1882 was merely declaratory of existing law, in so far as it prohibited the naturalization of Chinese. It was so considered by the Supreme Court in its discussion of the matter in the Fong Yue Ting case (supra). The added provision repealing the conflicting laws is mere surplusage, unless a field of operation for it can be found either directly or indirectly.

No such field can be found directly, for there were no laws upon the statute books in 1882 that permitted the naturalization of Chinese by the Federal or State courts of this country. Indirectly, such a field may be found, to wit: Section 1993 of the Revised Statutes then existed, and under that section persons belonging to the very race, members of which could not be naturalized by our courts, no matter how long they might have resided here, could, in a technical way at least, be considered as citizens of the United States. Is not the conclusion almost inevitable that in order that the thing, procurement of which by direct methods was being provided against, might not be procured by indirect methods, Congress inserted the provision in question in the act? Certainly section 1993 was in effect, if not in words, in conflict with the spirit and intent of section 14 of the act of 1882. In view of all that is said foregoing, it may be stated with confidence that, observing all of the provisions of treaties and laws bearing upon the subject, giving due weight to the general policy of the United States with regard to the subject, and construing the various provisions together and in the light of such general policy, Congress has not expressed, certainly not clearly expressed, an intention that the children born in China to Chinese-American citizen fathers shall be regarded as citizens of the United States. As already seen, persons born abroad of American fathers can not be regarded as citizens by virtue of anything contained in the Constitution. If they are citizens at all, it is because Congress has seen fit to extend to them some provision of a law passed in pursuance of its constitutional authority to enact naturalization statutes. If the one provision of the naturalization laws (sec. 1993, R. S.) which can be invoked in this regard, either because of any limitation upon its original scope or because of limitations imposed upon it by subsequent treaties or laws essentially inconsistent therewith, does not reach such cases and naturalize the persons involved, they are not citizens of the United States, no matter what the status of their fathers may be, for, not being citizens by birth under the Constitution, they can not be citizens by birth, or otherwise, under the naturalization laws unless such laws clearly and affirmatively reach and cover their case.

If the naturalization statute (sec. 1993, R. S.) is not modified and limited in its operation in the manner hereinbefore asserted by subsequent expressions of the will of the Government of the United States embodied in treaties with China and in the Chinese-exclusion act of 1892, this curious, anomalous, and almost unthinkable situation exists with respect to the conference statutorily of citizenship upon persons of the Chinese race: No matter how long a person of that race may have lived in the United States—even if he came here when but a day old and resided here until an old man; no matter how thoroughly Americanized in ideas, ideals, and aspirations such a person may have become; no matter how thoroughly he may have renounced in his own mind and in his own life everything that in the least degree tied him to his foreign allegiance; and no matter how anxious he may be to become a good American citizen, the law denies him that right, not only negatively but affirmatively, and says that his race bars him forever from declaring allegiance to the United States. On the other hand, a person born in China of a Chinese mother by a father of the Chinese race who, through the accident of birth upon American soil, has been vested with the constitutional right of American citizenship, but who perhaps has not the remotest idea of the rights, privileges, and obli-

gations of such status; a person who, following his birth in foreign parts, is reared as a subject of China in every sense and particular and is attached by the strongest ties to the Chinese Government and to all things Chinese; a person who continues to reside in the country of his birth under the care and protection of his foreign mother, attending Chinese schools, studying the Chinese language and literature, and regarded by himself, by his neighbors, and by the very Government under which he is born as a subject of China—such a person, upon claiming American citizenship to meet some exigency in his life or to serve some selfish need of his own or of his father, notwithstanding that he belongs to the same race as the other man just described, is entitled to be regarded as an American citizen and to enjoy all the rights, privileges, and immunities that inhere in that inestimable heritage.

The two extremes are used as a striking illustration, but they are not nearly so unusual in actual occurrence as might be considered by those not acquainted with all the details of the enforcement of the Chinese-exclusion laws. Surely Congress can not be charged with having intended to leave so important a phase of our citizenship matter in this anomalous situation. Surely Congress did not intend to refuse naturalization to a qualified member of the Chinese race and in the same breath to confer it, or to thrust it, upon an unqualified member of that race. Surely when Congress in 1882 repealed all laws in conflict with that provision prohibiting the naturalization of Chinese it must have been with the purpose of repealing section 1993 in so far as it naturalized Chinese persons belonging to that class covered by said section, to wit, children born abroad of American fathers.

II. CONCEDING ARGUENDO, AND ARGUENDO ONLY, THAT SECTION 1993, REVISED STATUTES, NATURALIZES FOREIGN-BORN CHILDREN OF AMERICAN CITIZENS OF THE CHINESE RACE, STILL THESE APPLICANTS SHOULD NOT BE ADMITTED; THEIR ACTION IN SETTLING IN CHINA AND REMAINING THERE UNTIL AFTER REACHING THEIR MAJORITY WITHOUT INDICATING IN ANY MANNER AN INTENT TO CHOOSE AMERICAN CITIZENSHIP AMOUNTING TO AN ELECTION BY THEM OF CHINESE CITIZENSHIP.

Abandoning for the purpose of this branch of the argument the contentions made under the preceding heading, and ignoring the fact that these applicants are of the Chinese race, let us examine this matter carefully for the purpose of determining whether, under all the facts and circumstances shown, applicants can be considered as naturalized American citizens under section 1993 of the Revised Statutes. It must be remembered that one of them has lived in China ever since his birth and until almost 29 years of age, and that the other has lived there ever since his birth until almost 23 years of age and has taken a foreign wife and established a home of his own for his family in a foreign land.

Internationally children born abroad to American fathers are born to a dual citizenship, but so long as they remain absent from the United States she can not enforce her claims with respect to them against the claim to their allegiance and citizenship by the country in which they are born. It is not necessary in this connection to consider whether or not anything that may have been done by them or by their fathers for them during their minority could have resulted in divesting them of American citizenship from the point of view of this country any more than it was necessary for the Supreme Court to consider the same question in connection with the Wong Kim Ark case (169 U. S., 649, 704). The question is whether what they did do, taken in conjunction with what they failed to do, upon reaching their majority or within a reasonable time thereafter has divested them of American citizenship.

It is a rule of international law that children born to persons while in a country foreign to that of such persons' citizenship partake of the nationality of their fathers, subject to the right to elect, when they arrive at the age of 21, the nationality of their birth. (Wharton on Conflict of Laws, vol. 1, p. 91.) No reason is perceived why remaining in a country, establishing oneself therein, and continuing in every substantial sense to be a part of the body politic thereof, are not actions which, speaking louder than words, declare an election of citizenship upon the part of the person so situated as to be entitled to choose. That this is the view of the lawmakers of this country may be gathered from the fact that in section 2 of the expatriation act of March 2, 1907 (34 Stat., 1228) Congress has declared that when any naturalized citizen shall have resided for two years in the foreign State from which he came, or for five years in any other foreign State, it shall be presumed that he has

ceased to be an American citizen, but that this presumption may be overcome by an affirmative act upon the part of such a person consisting in the presentation of satisfactory evidence to a diplomatic or consular officer of the United States of his intention to retain his American citizenship; and from the fact that in section 6 of the same law Congress has specified that protection will not be extended by the United States Government to children born abroad of American parents unless upon reaching the age of 18 they record in an American consulate their intention to become residents and remain citizens of the United States and take the oath of allegiance to the United States upon attaining their majority.

(Of course, if the provisions of section 2 of the expatriation act above cited, although contained in an act passed at the request of the Department of State as a guide to that department in the extension of protection to naturalized citizens going into foreign ports, were couched in words clearly showing that such provisions were intended to apply to all varieties of naturalized citizens and not merely to one who had been naturalized by the courts while residing within our territorial limits, decision of the question now confronting the bureau would be easy, as the statute would determine the matter and no necessity would exist for resorting to otherwise established principles of either municipal or international law.)

That under certain circumstances an election of citizenship by one who internationally has a dual citizenship is permitted to be evidenced otherwise than by actually going through the process of foreswearing allegiance to one and swearing allegiance to the other of the two countries, seems to have been recognized by the Supreme Court in its discussion of the Wong Kim Ark case and especially in the concluding division (VIII) of its decision (169 U. S., 704). As long ago as September 14, 1904, the former Department of Commerce and Labor took this view of the matter, and in its published decision No. 60 excluded from the United States a Chinese applicant who had been born in this country, had been taken to China by his parents when but 18 months of age, had lived in China for more than 22 years, and upon reaching his maturity had evinced no intention of locating on his own account in the country of his birth, but had remained in China for three full years past the time of reaching his majority; holding that such a case was entirely different on the facts from the Wong Kim Ark case, and, in effect, that the applicant had elected the nationality of the country of his parents in which he had been living since a babe in arms. Again, on October 31, 1906, the department held, on the advice of its solicitor, that one Lim Wah Ying should be excluded as an alien, the solicitor's opinion in said cases reading as follows:

"Accepting the statement of the applicant at its face value, it appears that Lim Wah Ying, though born in the United States February 4, 1877, was removed by his parents in 1879, when only 2 years old, to China, where he resided with his mother without interruption until the present year; that his father returned to this country without him in 1887, when he was 10 years of age, and his brother in 1899, when he was 22; that on attaining his majority he did not by word or deed indicate any intention of claiming American citizenship, but, on the contrary, he continued to reside in China for 10 years thereafter, marrying and going into business; that he did not make up his mind to come to this country until a few months before sailing, and that he regarded himself as a subject of the Emperor of China while residing in that country.

"On this showing I think it clear that the applicant must be regarded as having elected to abandon his status as a citizen of the United States, and that being a Chinese person of the excluded classes, not a citizen, his appeal should be dismissed." (Bureau of Immigration File No. 14610–C/123).

IMPORTANCE OF THE SUBJECT.

It can readily be understood that this is the kind of a subject on which the bureau feels that it should have an authoritative judicial decision. It is important not only because any different view of the law than that taken by the bureau must result in the admission to the United States of many Chinese persons who to all substantial intents and purposes are of the very class intended to be excluded by the Chinese exclusion laws, but also because the general situation with respect to the conference of citizenship by naturalization becomes, under any different construction of the law than that contended for, so confused, anomalous, indeed so ridiculous, as to call for action

of some kind to effect a remedy. It is hoped, therefore, that if the department approves of the bureau's recommendation that the decision of the commissioner of immigration at San Francisco be affirmed in these two cases such action will be taken with the purpose of making a test of the matter before the courts in the event a writ of habeas corpus is sued out, as seems altogether likely, and in this connection it is suggested that it might be well to ascertain in advance the views of the Attorney General, for otherwise the case might, if decided adversely by a district court, be left where no court of final jurisdiction had passed upon the question involved, it being possible, although not deemed probable, that the Attorney General might think that nothing could be gained by appealing.

Respectfully submitted.

A. CAMINETTI, *Commissioner General.*

The CHAIRMAN. Now, let me ask a question. If there is some doubt as to the right of Congress properly to proceed to give naturalization to an alien, there can not be any doubt as to the right of Congress, by special act, to repatriate citizens, can there?

Mr. PARKER. I think, Mr. Chairman, the two questions are entirely different. I was very much impressed with Mr. Wilson's statement on that point. I think the two questions are entirely different. I think it is an entirely different proposition to pass a special act of Congress, under which you allow some person, in disposing of questions of dual citizenship under international law, which come up all the time, to be received back and have the character and privileges of citizenship, and to give citizenship out and out to somebody who has never had citizenship, and who is not affected by this question of dual citizenship in any way whatsoever.

The CHAIRMAN. In the case of American women who married alien enemies during the war, Congress would clearly have the right to reestablish their American citizenship?

Mr. PARKER. I do not think there is any doubt about it, but I am inclined to think that, as a matter of policy, the way to handle that would be by some general law, rather than by individual cases. That, of course, would be a question of policy.

The CHAIRMAN. Now, then, in cases arising where aliens have been under the impression that they were citizens of the United States, and conditions are such that they can not be made citizens without a long lapse of time, do you think Congress would be beyond its powers in granting them citizenship?

Mr. PARKER. I am inclined to think so, Mr. Chairman.

The CHAIRMAN. We are indebted to you, Mr. Parker.

(Whereupon, at 12.30 o'clock, the committee went into executive session, and adjourned at 1.15 p. m.)

(House joint resolution 79, a joint resolution admitting George A. Huntley to the rights and principles of citizenship in the United States was, by vote of the committee, laid on the table.)

COMMITTEE ON IMMIGRATION AND NATURALIZATION,
HOUSE OF REPRESENTATIVES,
Monday, June 27, 1921.

The committee met at 10 o'clock a. m., Hon. Albert Johnson (chairman) presiding.

The CHAIRMAN. The clerk is ready to publish the hearings on the Chalmers resolution, H. J. Res. 79, a joint resolution to admit

George A. Huntley to the character and privileges of a citizen of the United States. Mr. Cable has requested that an article by Hon. Fred K. Nielson, solicitor for the State Department, entitled "Some vexatious questions relating to nationality," and published in the Columbia Law Review of December, 1920, be added to the hearings as an appendix. (See Appendix A.) Without objection this will be done.

I desire to call the attention of the members of the committee to the status of House joint resolution 34, by Mr. Siegel, a joint resolution granting the rights and privileges of a citizen of the United States to Emil S. Fischer. This resolution was reported from this committee April 14, 1921, and placed on the Private Calendar. In the meantime the Senate passed, on May 2, Senate joint resolution 38, an identical resolution.

An effort was made to substitute the Senate measure for the House measure, which the House rejected on May 3. A motion to reconsider was entered in the House May 4, but no action has been taken thereon, and on Saturday last, when House joint resolution 34 was reached on the Private Calendar, the Senate bill was committed to the House Committee on Immigration and Naturalization, and the Committee of the Whole House was discharged from consideration of the House resolution, and the same was re-referred to this committee. Therefore, both bills are before the committee for action, and the Chair will entertain a motion that both the Senate and the House resolutions be laid on the table.

Mr. Box. Mr. Chairman, I make that motion.

Mr. MALONEY. I second the motion.

(The motion of Mr. Box was adopted.)

Mr. Box. Mr. Chairman, in that connection, I think the chairman requested that that be done, and the chairman did that at the request of this committee. I think that statement ought really to appear in connection with the statement you have made.

The CHAIRMAN. I am glad to have that statement made.

Mr. Box. You did that under instructions from the committee, and I think it should be shown that you were acting under instructions from the committee. The chairman asked that that bill be re-referred. Somebody who did not understand what had happened here might thing the chairman took the responsibility to do that of himself, and I wanted it to appear that it was the action of the committee. It was the unanimous vote of the committee that he do that.

The CHAIRMAN. I am glad to have that statement made.

(Thereupon the committee proceeded to the consideration of other business.)

APPENDIX A.

[Published in the Columbia Law Review, December, 1920.]

SOME VEXATIOUS QUESTIONS RELATING TO NATIONALITY.

(By Hon. FRED K. NIELSEN, Solicitor, Department of State.)

The war has occasioned much discussion of questions growing out of the conflict of municipal laws with regard to nationality, a subject which has often been the cause of international complications. Great annoyance has been experienced by the belligerent Governments generally in dealing with persons

possessing a "dual nationality." Conflicting claims to the allegiance of such persons have frequently arisen in connection with steps taken by these Governments to recruit their man power at home and abroad; and neutral Governments have been concerned over requirements of military service made on such persons whose allegiance they claimed. The war has also served to emphasize certain serious questions as to the construction of the act of Congress of March 2, 1907,[1] which was enacted with a view to clarifying the law of the Unted States with regard to citizenship.

It is the purpose of this article briefly to discuss (1) the reasons underlying the annoying difficulties that grow out of conflicting municipal laws respecting nationality, with particular reference to certain features of the laws of the United States bearing on such difficulties; and (2) some unfortunate obscurities in the existing law of this country.

I.

According to the common law, place of birth determines nationality.[2] Lord Chief Justice Cockburn, in his "Treatise on Nationality," states the rule as follows:[3]

"By the common law of England, every person born within the dominions of the Crown, no matter whether of English or of foreign parents, and, in the latter case, whether the parents were settled or merely temporarily sojourning in the country, was an English subject; save only the children of foreign ambassadors (who were excepted because their fathers carried their own nationality with them), or a child born to a foreigner during the hostile occupation of any part of the territories of England. No effect appears to have been given to descent as a source of nationality."

By statute, foreign-born children of British subjects were declared to be natural-born subjects of the Crown.[4]

"All children born out of the ligeance of the Crown of England or of Great Britain, or which shall hereafter be born out of such ligeance, whose fathers were or shall be natural-born subjects of the Crown of England or of Great Britain at the time of the birth of such children, respectively, * * * are hereby declared to be natural-born subjects of the Crown of Great Britain to all intents, constructions, and purposes whatsoever."

The above stated common-law and statutory principles also underlie the British law of nationality which went into effect in 1915.

It is now settled that the law of the United States relating to nationality is substantially the same as that of Great Britain. The fourteenth amendment to the Constitution is declaratory of the common-law doctrine, as stated by Mr. Justice Gray in United States *v.* Wong Kim Ark,[5] "of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born or resident aliens, with the exception of qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within, or during the hostile occupation of a part of our territory, and with the single additional exception of children of the Indian tribes owing allegiance to their several tribes."

The act of April 14, 1802,[6] extended citizenship to foreign-born children of American citizens. This law conferred citizenship on foreign-born children of parents who at the date of its enactment were or had been citizens of the United States, and did not include foreign-born children of persons becoming citizens since that date.[7]

The act of February 10, 1855,[8] amplified this statute so as to extend citizenship to "persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States."

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[1] (1907) 34 Stat. 1228, 4 U. S. Comp. Stat. (1916), secs. 3958–3964.
[2] Calvin's case (1608), 7 Coke la., 18.
[3] (1869) p. 7.
[4] St. 4 Geo. 2 (1730–1731), c. 21, sec. 1.
[5] (1898) 169 U. S. 649, 18 Sup. Ct. 456.
[6] 2 Stat. 155, 5 U. S. Comp. Stat. (1916), sec. 4367.
[7] 2 Kent. Comm. (14th ed. 1896), *52–53; State ex rel. Phelps *v.* Jackson (1907), 79 Vt. 504, 65 Atl. 657; United States *v.* Wong Kim Ark (1898), 169 U. S. 469, 18 Sup. Ct. 456. But see Boyd *v.* State ex rel. Thayer (1892), 143 U. S. 135, 12 Sup. Ct. 375, in which Chief Justice Fuller expressed the view that "the intention was that the act of 1802 should have a prospective operation."
[8] (1855) 10 Stat. 604, 4 U. S. Comp. Stat. (1916), sec. 3948.

It is therefore clearly established now that citizenship in the United States is, fundamentally, determined by place of birth (jus soli) as distinguished from citizenship through descent (jus sanguinis), except in the case of foreign-born children of American citizens.

In a communication under date of June 9, 1915,[9] addressed by Secretary of State Lansing to Senator Lodge, in which the question of dual nationality was discussed, Mr. Lansing said:

"The cases of persons born in the United States of alien parents should not be confused with the cases of persons born abroad who have obtained naturalization as citizens of this country. In the former cases the department recognizes now, as it always has heretofore, that the persons concerned are born with a dual nationality. In the latter cases the department does not recognize the existence of dual nationality in view of the fact that persons who obtain naturalization as citizens of this country are required to renounce their original allegiance."

As pointed out by Mr. Lansing, the Department of State has consistently recognized the existence of dual nationality resulting from a conflict between the jus soli and jus sanguinis. Any suggestion, such as has sometimes been made,[10] that no dual nationality should be recognized in cases of this character is obviously without any foundation. The United States in its practice in relation to this question clearly cannot disregard the general doctrine of nationality underlying the law of continental Europe, particularly since the principle of the jus sanguinis is apparently in a measure incorporated in our own law.[11] Serious international difficulties infrequently result from such a conflict of laws. The principles underlying it are well recognized among nations, and it is seldom that there is any fundamental difference of opinion in respect of their application.

The fact that the Government of the United States has in the past been unable to obtain, as it has at times attempted to do, the concurrence of other nations in the view that no dual status can exist in the case of a person who becomes naturalized in this country is evidently the cause of the difficulties that have not infrequently arisen between our Government and other governments with regard to questions of nationality.

Judicial and administrative authorities of the United States have not infrequently overlooked the fundamental principle that expatriation from the legal standpoint is a domestic affair, governed by municipal law and in no way controlled by international law, although questions in connection with the change and multiplication of nationality are often the cause of international complications. It seems clear that at the present time nations generally, including the United States, do not in their practice recognize the doctrine that has sometimes been advanced that a person may as a matter of natural and inherent right throw off his allegiance without the consent of his Government. It can probably be correctly said that there are few subjects respecting which authorities of our Government have uttered such varying and inconsistent statements. A few illustrations will suffice to make this clear.

Prior to any legislative declaration on the subject of expatriation, American courts appear to have expressed, generally, through not uniformly, the view that the United States inherited the English common-law doctrine that a person can not by his own act, without the consent of his Government, throw off his allegiance. In Shanks *v.* Dupont,[12] Justice Story declared the general doctrine to be "that no persons can by any act of their own, without the consent of the Government, cast off their allegiance and become aliens." Following a résumé of decisions, Chancellor Kent, in his Commentaries, says:[13]

"From this historical review of the principal discussions in the Federal courts on this interesting subject in American jurisprudence the better opinion would seem to be that a citizen can not renounce his allegiance to the United States without the permission of the Government, to be declared by law; and that, as there is no existing legislative regulation on the case, the rule of the English common law remains unaltered."

The first Secretary of State to announce the doctrine that naturalization in the United States not only imposes on a person a new allegiance, but also

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[9] (Special Supp. 1915) 9 American Journal of International Law 369, 373.
[10] See, for example, the extract from Senator Lodge's letter to Secretary Lansing, quoted in the letter of Secretary Lansing above referred to.
[11] See (1802) 2 Stat. 155, 4 U. S. Comp. Stat. (1916), sec. 3947.
[12] (28 U. S. 1830) 3 Pet. 241.
[13] (13th ed. 1884) Vol. II, p. *49.

absolves him from all the obligations of his former allegiance appears to have been James Buchanan. In an instruction of December 18, 1848, to George Bancroft,[14] American minister at London, regarding the duty of the United States in protecting American citizens naturalized or native, Mr. Buchanan said:[15]

"Our obligation to protect these classes (naturalized and native American citizens) is in all respects equal. We can recognize no difference between the one and the other, nor can we permit this to be done by any foreign Government, without protesting and remonstrating against it in the strongest terms. The subjects of other countries who, from choice, have abandoned their native land, and, accepting the invitation which our laws present, have emigrated to the United States and become American citizens, are entitled to the very same rights and privileges as if they had been born in the country. To treat them in a different manner would be a violation of our plighted faith as well as of our solemn duty."

On the other hand, the earlier doctrine was later reasserted by Secretary Webster in a letter under date of June 15, 1852, in reply to an inquiry as to whether a native of France who had been naturalized in the United States could expect protection from this Government in France when proceeding thither with an American passport. In this communication Mr. Webster said:[16]

"If, as is understood to be the fact, the Government of France does not acknowledge the right of natives of that country to to renounce their allegiance, it may lawfully claim their services when found within French jurisdiction."

As further instances of the varying views of the executive officers of this Government, attention may be called to opinions rendered by Attorneys General Caleb Cushing and Jeremiah S. Black.

Mr. Cushing, in an opinion given by him in 1856 with reference to a question propounded by the Bavarian minister at Berlin regarding the law of the United States, defined expatriation as "a general right, subject to regulation of time and circumstances according to public interests; and the requisite consent of the State presumed where not negatived by standing prohibitions." Subject to "the conditions thus indicated," and to "such others as the public interest might seem to Congress to require to be imposed," it seemed to him, he stated, that the right of expatriation existed and might be freely exercised by citizens of the United States."[17]

On the other hand, Judge Black, as Attorney General, in 1859, in an opinion given to President Buchanan regarding the arrest and impressment into military service at Hanover of Christian Ernst, a naturalized American citizen of German origin who had returned to that city, advised that it was the "natural" right of every free person who owes no debts and is not guilty of any crime to leave the country of his birth in good faith and for an honest purpose" and to throw off his natural allegiance and substitute another for it; that "natural reason and justice, writers of known wisdom," and "the practice of civilized nations" were all opposed to the "doctrine of perpetual allegiance"; that "expatriation included not only emigration out of one's country but naturalization in the country adopted as a future residence"; that if Mr. Ernst, a citizen of the United States, violated the law of Hanover, which forbade him to transfer his allegiance to the United States, the laws of the two countries were in conflict, and "then the law of nations steps in to decide the question upon principles and rules of its own."[18]

By the act of July 27, 1868,[19] Congress declared that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness." The act further contains provisions requiring the President to take certain steps looking to the release of any American citizen who "has been unjustly deprived of his liberty by or under the authority of any foreign Government."

Irrespective of what may be considered to be the intendment of this act, it seems clear that since the date of its enactment the legislative department of the

[14] An interesting article by Dr. J. B. Moore in Harper's Magazine, January, 1905, gives a historical sketch of the attitude of American officials.
[15] 3 Moore, Digest of International Law (1906), 566–567.
[16] Moore, op. cit. 567.
[17] 8 Op. Atty. Gen. 139, 162, 168.
[18] 9 Op. Atty. Gen. 356.
[19] 15 Stat. 223, 4 U. S. Comp. Stat. (1916), secs. 3955, 3957.

Government has passed legislation which negatives the idea of any inalienable right of expatriation on the part of a citizen without the consent of his Government.

In connection with the subject of such legislation, it is interesting and pertinent to bear in mind Attorney General Black's definition of the right of expatriation. His statement that the law of nations determines by rules of its own the conflict between national laws respecting nationality may be ascribed to a failure to distinguish between international law and municipal law. However, his view that expatriation includes both immigration and naturalization is evidently in harmony with his broad definition and appears logical and correct.

The act of March 2, 1907, provides that "no American citizen shall be allowed to expatriate himself when this country is at war." This law further provides that "when any naturalized citizen shall have resided for two years in the foreign State from which he came, or for five years in any other foreign State, it shall be presumed that he has ceased to be an American citizen, and the place of his general abode shall be deemed his place of residence during said years." And unless such person can rebut this presumption under rules prescribed by the Department of State this Government ceases to extend him its protection abroad. Immigration and naturalization, which Attorney General Black said are included in expatriation, are both, as domestic questions, regulated by comprehensive congressional enactments.

It would accordingly seem clear that an unrestricted right of expatriation is not recognized under the laws of a country like the United States, which deny the right of expatriation during times of war; which do not confer (as it has sometimes erroneously been stated they do) on naturalized citizens all the rights and privileges enjoyed by natives, eligibility to the Presidency, for instance, being limited to native citizens, and the right to protection being withdrawn from naturalized citizens because of residence in a foreign country for specified periods; and which extensively restrict alien immigration and naturalization.

It seems pertinent to observe, with reference to laws of this general character and with particular reference to those relating to the loss of protection of the United States resulting from residence abroad, that it may be well for this Government carefully to consider whether such legislation should not be regarded as having the effect of imposing substantial limitations on it with respect to representations to a foreign country relative to the treatment by such foreign country of natives thereof who may return thereto after having been naturalized in the United States.

Furthermore, it seems pertinent to bear in mind that our law is probably more conducive to conflicts of nationality than are the laws of other countries. This observation could perhaps be made with regard to the law of this country solely for the reason that it is grounded on the jus soli. The fact that nationality may also be acquired by the combined effect, so to speak, of descent and residence appears to have been responsible in a measure for some international difficulties.

If an American citizen obtains naturalization under the laws of a foreign country during times of war, he evidently had a dual nationality, since this Government can not interfere with the operation of the laws of such foreign country. The inconsistency of the Government of the United States in occasionally insisting that persons coming to our country from countries which place restrictions on expatriation have not a dual nationality when they obtain citizenship under the laws of the United States without being first released from their original allegiance becomes clear in the light of our own restriction on expatriation, which would be meaningless unless it is construed as holding a person to his allegiance to the United States irrespective of any action he may take to acquire citizenship under the laws of another country. And yet the United States in admitting foreigners to citizenship is indifferent to the status of such persons under the laws of their country of origin. Some nations do not admit persons to naturalization except on proof that their change of allegiance is permitted by the Governments to which they owe allegiance.[20] Hall suggests that easy requirements for naturalization may be inconsistent with comity between nations. He says:[21]

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[20] See 3 Moore, op. cit. 588.
[21] International Law (5th ed. 1904) 241.

"In the meantime, and until an agreement is come to upon the question of principle, it may be said that though a state has in strictness full right to admit foreigners to membership, and to protect them as members, it is scarcely consistent with the comity which ought to exist between nations to render so easy the acquisition of a national character, which may be used against the mother state, as to make the state admitting the foreigner a sort of accomplice in an avoidance by him of obligations due to his original country."

As observed by Cogordan,[22] the idea of a native land, which presupposes fidelity and attachment, is incompatible with the idea of the coexistence of several nationalities in the same individual, but in practice conflicts of nationality are often inevitable because of the peculiar legal situation of an individual claimed as a national by two countries. Irrespective of what might be termed the ethical aspects of the views at times asserted by the Government of the United States as to the extent to which recognition should be given by one Government of the status conferred by another through naturalization of foreigners, the difficulty attending any effort on the part of this Government to bring about the acceptance by other Governments of views at times asserted in the past evidently is, that, as has been pointed out, there is no generally accepted principle of the law of nations to which, in international relations, municipal laws with respect to expatriation must yield. It is clear, therefore, that a situation exists in which there is an irreconcilable conflict between the laws of two Governments, each of which laws have full force and effect in the respective countries.

Authorities on international law generally have in an explicit manner recognized this situation. Touching this point, Mr. Hannis Taylor says:[23]

"As every state is equally entitled to its own views as to the nature and extent of the right of expatriation, and as no general understanding has been reached on the subject, no one state can do more than settle the question for itself by its own action, and as to others by express treaty stipulations."

Halleck says:[24]

"Admitting, then, that the right of expatriation, in its broadest and most comprehensive sense, is recognized as a maxim of international law, this principle must be subordinate to the universally conceded doctrine of the same law, that every independent State possesses exclusive sovereignty within its own territory, that its law binds all persons within its own jurisdiction, but can not operate within the territory of another power."

Apart from the reference to a "maxim of international law," this assertion could seemingly be properly interpreted to mean that the question of expatriation through naturalization is like other questions with respect to nationality governed by municipal law.

Oppenheim says:[25]

"Since the law of nations does not comprise any rules concerning naturalisation, the effect of naturalisation upon previous citizenship is exclusively a matter of municipal law of the States concerned. Some States, as Great Britain, have legislated that one of their subjects becoming naturalised abroad loses thereby his previous nationality; but other States, as Germany, have not done this. Furthermore, some States, as Great Britain again, deny every effect to the naturalisation granted by them to a foreigner whilst he is staying on the territory of the State whose subject he was previous to his naturalisation, unless at the time of such naturalisation he was no longer a subject of such State."

Hall says:[26]

"A State has necessarily the right in virtue of its territorial jurisdiction of conferring such privileges as it may choose to grant upon foreigners residing within it. It may, therefore, admit them to the status of subjects or citizens. But it is evident that the effects of such admission, in so far as they flow from territorial rights of a State, make themselves felt only within the State territory. Outside places under the territorial jurisdiction of the State they can only hold as long as they do not conflict with prior rights on the part of another State to the allegiance of the adopted subject or citizen. A State which has granted privileges to a stranger can not insist upon his enjoyment of them and can not

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[22] L'idée même de patrie, qui suppose la fidélité et l'attachment, est incompatible avec la coexistence de plusieres nationalités chez le même individu. Mais, en pratique, les conflicts positifs de nationalité, où deux pays réclament le même individu comme national, sont une cause fréquente de difficultés entre les États. La nationalité au point de vue des rapports internationaux (2d ed. 1890) 15.

[23] International Public Law (1901) 227.

[24] 1 International Law (3d ed. 1893) 411.

[25] 1 International Law (2d ed. 1905), secs. 359–360.

[26] International Law (5th ed. 1904) 215.

claim the obedience which is correlative to that enjoyment, outside its own jurisdiction as against another State, after the latter has shown that it had exclusive rights to the obedience of the person in question at the moment when he professed to contract to yield obedience to another Government."

Hall points out that international law by its very nature is not competent to prescribe a rule regarding the rights of an individual against his State. As "individuals have no place in international law," he says, rights of individuals to change their nationality, if binding on States, "must be so through the possession of a right by the individual as against his State which is prior to and above those possessed by the State as against its members," and whether or not such a right exists "international law is obviously not competent to decide."[27] But it is evidently not Hall's view that international law by its nature is such that it could not prescribe a generally accepted rule with regard to the character and extent of recognition that one nation should give to the status conferred on its nationals by another nation. With regard to the application of international law to such a question he says:[28]

"International law must either maintain the principle of the permanence of original ties until they are broken with the consent of the State to which a person belongs who desires to be naturalized elsewhere or must recognize that the force of this principle has been destroyed by diversity of opinions and practice, and that each State is free to act as may seem best to it. There can be no doubt that the latter view is more in harmony with the facts of practice than the former."

An interesting question arises as to the status in a third country of a person having a dual nationality as a result of a conflict between national laws. While neither of the two countries whose laws conflict can claim the allegiance of such a person as against the other, both may presumably be entitled to extend their protection to him in a third country. With regard to the rights of two such governments against third States, Oppenheim observes that each of them "appear as his sovereign," and that "it is therefore possible that each of them can exercise its right of protection over him within third States."[29]

A more difficult phase of this question, one of a practical nature, concerns the attitude of a third country toward the claims of the country of nativity and the country of adoption. The third country, in the absence of any applicable principles of law, will doubtless suit its convenience as to its dealings with such persons.[30] This question, which perhaps infrequently arises in times of peace, has been one of considerable interest during the war. The United States and other belligerent nations have taken such action with regard to the status of these persons as the national safety has appeared to require, and restrictions on the activities and places of residence of these persons have been governed by that rule. So far as the United States is concerned, it evidently could not logically insist, in spite of any importance it may attach to nationality conferred by naturalization, that citizenship conferred by it must be regarded as exclusively determining such a person's status in a third country. It has really shown, by legislation denying certain privileges to naturalized persons and by legislation revoking under certain circumstances all privileges granted to them, that it attaches much more importance to nationality acquired by birth than to nationality acquired through naturalization.

The Government of the United States can, without illogically asserting an unqualified right of expatriation based on the existence of some supposed principle of international law relating to change of nationality, continue as it has done in the past, through treaty negotiations and otherwise, to bring about as far as possible, a reciprocal and uniform practice in respect of the status of immigrants who acquire a new nationality. By adopting this consistent and logical course it will doubtless accomplish more than it has in the past looking to the freedom on the part of the individual to choose a new nationality and to be released from his old allegiance. At times the Department of State has evidently acted in harmony with such a policy, as shown, for example, in its attitude in discussing some years ago with the Government of Guatemala the case of J. Zenon Posadas,[31] in whose behalf the Guatemalan Government had refused to receive any representatives from the Government of the United States, although he had resided in this country for over twenty years, during approxi-

[27] *Ibid.*, 230.
[28] *Ibid.*, 231.
[29] 1 International Law (2d ed. 1905), sec. 310.
[30] See *Ibid.*, sec. 310.
[31] See For. Rel. 1903, p. 581, *et. seq.*

mately half of which period he had been a naturalized American citizen. In an instruction of September 20, 1912, to the American legation at Guatemala City the department, after pointing out that the Guatemalan Government's position seemed inconsistent with certain provisions of its Law of Foreigners of 1904, which appeared to recognize the right of expatriation through naturalization in another country, said:

"As the department understands it from the note of the Minister for Foreign Affairs, the position of the Guatemalan Government would apparently, for all practical purposes, deny the right of expatriation on the part of Guatemalan citizens—a position which is even more extreme than that taken by these governments (in some of which the Powers have found it necessary to exercise extraterritorial rights) which deny to their nationals the right to throw off their allegiance without the consent of the government and accordingly refuse to recognize naturalization obtained in another country unless such consent has first been obtained. * * *

"The department feels that Mr. J. Zenon Posadas, who eight years ago renounced his Guatemalan allegiance and became a citizen of this country—an act apparently not only not in violation of the law of Guatemala but recognized by such law—has grounds for complaint against the position taken by the Guatemalan Government to the effect that in relation to his business affairs in that country he must be regarded as a citizen of Guatemala not entitled to the assistance of this Government in connection with any difficulties he may have with the Guatemalan Government. The department considers that this position of the Guatemalan Government, if insisted on, must render impracticable the solution of important questions which are likely continually to arise from time to time between the two Governments."

It seems possible that in the recently concluded treaties of peace a precedent may be found that may be of some value in furtherance of a uniform policy of liberality in dealing with questions relating to the loss and acquisition of nationality. Article 278 of the treaty with Germany, which, with the sole alteration of the name of another country substituted for Germany, appears in other treaties, reads as follows:

"Germany undertakes to recognize any new nationality which has been or may be acquired by her nationals under the laws of the allied and associated powers and in accordance with the decisions of the competent authorities of these powers pursuant to naturalization laws or under treaty stipulations, and to regard such persons as having, in consequence of the acquisition of such new nationality, in all respects severed their allegiance to their country of origin."

The obscurities so often consequent upon the difficulty of framing stipulations in international agreements in which a considerable number of nations participate are evident to a slight degree in the language of the above quoted article. However, there is no doubt as to its meaning. It stipulates a unilateral obligation to recognize new nationality acquired under naturalization laws or under treaty stipulations; and the obligation in explicit terms eliminates all questons of dual nationality on the part of a person who acquires a new nationality. The country of origin of such a person relinquishes all claim to his allegiance.

The obligations of this article are unilateral, and among the numerous nations which joined in imposing the article on enemy countries are several whose practice does not conform to the principles underlying it. However, as suggested above, it seems possible that it may serve as a precedent for some action in the near future looking to the establishment through international agreement of a uniform, liberal practice among the majority of the nations of the world. For this purpose international conventional stipulations would seem desirable, but substantial progress might be made through a less formal procedure in the nature of international agreement with regard to the recommendation of principles for incorporation into municipal enactments.[82] Even though a general adoption of such sweeping provisions as those found in the treaties of peace with reference to the status of persons who acquire a new nationality might not be practicable or even desirable, there would appear to be no considerable obstacle to the formulation of principles of a reasonably satisfactory policy. Furthermore, it would seem not improbable that a desirable adjustment of the less serious difficulties resulting from conflict between the

[82] See Résolutions adoptées par l'Institut de droit international en séance du Septembre 1896, rélativement aux conflicts de lois en matière de nationalité (naturalization et expatriation) (1896) 15 Annuaire de l'Institut de Droit International 270.

jus soli and the jus sanguinis might be found in an international understanding based on a well-defined recognition of the so-called doctrine of election of nationality or on a rule with respect to domicile.

At the present time, practically all nations, by placing restrictions on the right of persons to expatriate themselves, deny an unqualified right to throw off allegiance without consent of their Governments. However, through modifications of their laws and through treaties, they have generally tempered the doctrine of perpetual allegiance. For example, England in 1870 passed an act[33] abandoning the common law doctrine of perpetual allegiance and providing that a British subject, on becoming naturalized in a foreign state, shall lose his original national character. And the United States by the act of March 2, 1907, permitted expatriation, although it restricted it to times of peace. It would seem important that the Government of the United States, with a view to furthering the principles so frequently professed by it, should in the first instance carefully consider whether modifications of its own municipal laws and practice might not materially contribute to the desired end.

II.

Statutory and constitutional provisions embodying the law of citizenship in the United States are and doubtless must be of such a general character that their practical application not infrequently involves somewhat troublesome questions of interpretation. However, existing statutes are such that it would evidently be possible as it would be highly desirable that they should be amplified and rendered more certain.

In accordance with the principle of election of nationality which has some recognition in international practice, a person possessing a dual status resulting from conflict between the jus soli and the jus sanguinis may on reaching his majority or within a reasonable time thereafter make an election of nationality.[34] The legislation of the United States seems incomplete, or probably it may be said inconsistent in dealing with this subject of election, in that it contains only provisions in respect of the choice of American nationality on the part of a person born of American parents abroad. The priciple of election appears to be recognized in a measure in section 6 of the act of March 2, 1907, which reads as follows:

"That all children born outside the limits of the United States who are citizens thereof in accordance with the provisions of section nineteen hundred and ninety-three of the Revised Statutes of the United States and who continue to reside outside the United States shall, in order to receive the protection of this Government, be required upon reaching the age of eighteen years to record at an American consulate their intention to become residents and remain citizens of the United States and shall be further required to take the oath of allegiance to the United States upon attaining their majority."

On the other hand our law apparently contains no recognition of an election of the nationality of another country acquired by descent which a person such as is referred to in the above quoted provision might make. During the war, American military authorities held for military service as American citizens persons born in the United States regardless of the fact that it might be clear that such persons possessed nationality of another country and regardless of strong evidence indicating that election had been made of the nationality of such country.

A precise definition of the scope of the provision of the act of March 2, 1907, with regard to the restriction on expatriation during times of war would have been desirable. Evidently there can be no doubt that this provision should be construed to apply to persons who obtain naturalization under the naturalization laws of another country. There seems somewhat less certainty as to its application to a person who takes an oath of allegiance to a foreign country, or to a woman who marries a foreigner, or to a naturalized citizen residing abroad for a protracted period.

In the so-called "Citizenship report" submitted by a board of three members to the Department of State under date of December 15, 1906,[35] which furnished the basis of the act of March 2, 1907, under the heading "Expatriation," it is recommended that the law asserting the right of expatriation (Section 1999

[33] St. 33 & 34 Vict. (1870) c. 14.
[34] See Van Dyne, Citizenship (1904) 25.
[35] H. Doc. 326, 59th Cong., 2d sess., p. 23.

of the Revised Statutes) should be supplemented by an act declaring that expatriation of an American citizen may be assumed under the following conditions:

First. When he obtains naturalization in a foreign State.

Second. When he engages in the service of a foreign Government and such service involves his taking an oath of allegiance to such Government.

Third. When he becomes domiciled in a foreign State, and such domicile may be assumed when he shall have resided in a foreign State for five years without intent to return to the United States; but an American citizen residing in a foreign country may overcome the presumption of expatriation by competent evidence produced to a diplomatic or consular officer of the United States under such rules and regulations as the President shall prescribe.

Fourth. Any person who shall have accomplished expatriation in the manner set forth in the preceding paragraphs shall, in order to reacquire American citizenship, be required to comply with the laws applicable to the naturalization of aliens.

Fifth. The exercise of the right of an American citizen to expatriate himself shall only be permitted or recognized in time of peace.

It accordingly appears that the board enumerated three kinds of acts by which expatriation might be accomplished, and that it may be inferred that any prohibition on expatriation must be regarded as applicable to the acts specified by the board and subsequently substantially incorporated into law. It consequently seems reasonable to consider it to have been the purpose of Congress to hold all American citizens to their allegiance during times of war and to suspend the operation of statutory provisions respecting the loss of citizenship in any form whatever.[36] In this situation an American citizen can be required to perform the duties of citizenship and be held to responsibility for any acts inconsistent with his loyalty to the Government of the United States. The construction of the law with regard to the status of persons residing abroad during times of war is obviously a question of much import. The right of such persons to the protection of this Government will in many instances depend upon whether or not the operation of statutory provisions with regard to expatriation has been suspended.

At the outbreak of the war in Europe a considerable number of American citizens enlisted in the British and French Armies. It has been judicially held that anyone taking the oath required by the British Government for enlistment expatriates himself under the law of the United States.[37] Congress evidently took that view when it enacted legislation permitting persons who might be deemed to have expatriated themselves by taking such an oath to acquire American citizenship by complying with certain formalities. It is not specified in this legislation whether persons who once more acquire American citizenship thereunder shall be regarded as naturalized or as native citizens under the general classification of citizens in the United States. If such persons are to be regarded as naturalized citizens, they presumably come within the scope of the provisions of the law of 1907 with regard to expatriation by residence abroad. The question of interpretation should probably be considered as settled by the latest act of Congress relative to repatriation. By the act of October 5, 1917,[38] a person who might be deemed to have lost his citizenship by taking an oath of allegiance to a foreign Government was enabled to "resume and acquire the character and privileges of a citizen of the United States." The subsequent act of May 9, 1918,[39] provided that such a person might "resume his citizenship." A reasonable construction of this provision evidently is that a person by complying with the requirements thereof is restored to precisely his original status.

The status of married women under our law appears to involve some unfortunate questions of doubtful interpretation.

It can probably be stated to be a general principle of our law that the nationality of the wife follows that of the husband.[40] However, it seems a very

[36] The statutory provision that no person shall be allowed to expatriate himself in time of war appears unfortunately to be at variance with stipulations found generally in the naturalization treaties of the United States which obligate this Government without any reservation to treat as nationals of other countries American citizens who become naturalized under the laws of such countries.

[37] Ex parte Griffin (D. C. 1916) 237 Fed. 445.

[38] (1917) 40 Stat. 340.

[39] (1918) 40 Stat. 545. 1 U. S. Comp. Stat. 1 (Supp. 1919), sec. 4352 (12).

[40] (1907) 34 Stat. 1228, 4 U. S. Comp. Stat., sec. 3960; see R. S., sec. 1994.

doubtful question whether the identity of a woman is so merged in that of her husband that when the presumption of expatriation arises against him under the act of March 2, 1907, it arises also against her. A woman who acquires American citizenship through naturalization probably loses the right to protection whenever it is lost by her husband. And yet there may be some doubt on that point in the case of a woman who has resided in the United States while the husband has resided abroad during a period which raised the presumption of expatriation against him. It seems a somewhat different question whether a presumption of expatriation runs against a married woman of American birth whose husband is a naturalized American and as such is subject to the provisions of the act of March 2, 1907, relating to expatriation. It is doubtful that the identity of such a woman should be considered to be merged in that of her husband, so that when a presumption of expatriation arises against him it is also applicable to her. The better view would seem to be that, while Congress has provided that an American woman who marries a foreigner shall lose her citizenship, it has not provided that protection shall be withdrawn from an American-born woman married to a naturalized American citizen against whom the presumption has arisen as a result of residence in a foreign country. It seems pertinent to observe touching this question that the provisions of the act of March 2, 1907, with regard to expatriation by residence abroad were evidently deliberately framed to deal solely with foreign-born persons who become naturalized in the United States.

The wife of a man who expatriated himself by taking an oath of allegiance to a foreign country would evidently be deprived of all nationality if her identity so far as concerns her nationality is completely merged in the identity of her husband, unless he should acquire nationality under the laws of the foreign country by taking an oath of allegiance to it. It seems possible that such a peculiar situation results from the existing law.

Although the law provides that an American woman who marries an alien shall take the nationality of her husband,[41] if she marries an alien when the United States is at war, she presumably remains an American citizen under the law of the United States, notwithstanding that under the law of a foreign country she may take the nationality of her husband. Our law, therefore, appears to have the effect, as has before been pointed out, of giving her an unfortunate dual status. Possibly the view might be taken that on the conclusion of peace her American citizenship is lost.

The status under the law of the United States of a woman possessing enemy nationality who marries an American citizen seems very doubtful in view of the provisions of section 1994 of the Revised Statutes, that a foreigner marrying an American takes the nationality of her husband only in case she "might herself be lawfully naturalized." Section 2171 of the Revised Statutes, which has been repealed by statutory provisions of similar purport,[42] provided that: "No alien who is a native citizen or subject, or a denizen of any country, State, or sovereignty with which the United States is at war shall be admitted to become a citizen of the United States." Section 2169 of the Revised Statutes restricts naturalization to "aliens being free white persons," and to "aliens of African nativity and to persons of African descent." Whether the limitation provided for by section 1994 of the Revised Statutes should be construed as having reference solely to women not included within the classes of persons who can become naturalized by virtue of section 2169 of the Revised Statutes, or as being applicable also to women of enemy nationality is a question apparently not settled by judicial decisions. The latter alternative appears to be the better view. However, such a construction would seem to result in leaving the alien woman with no nationality, since in all probability she would through marriage lose her nationality under the law of the enemy state. Possibly the view might be taken that on the conclusion of peace the woman automatically, so to speak, acquires the nationality of her husband. The question is one of interest in connection with the considerable number of marriages contracted by American soldiers in occupied territory in Germany.

The status of minors who become naturalized through the naturalization of parents involves a doubtful question of much concern to authorities who have to deal with questions of citizenship. In a case in which the parents reside abroad for a sufficient period of time so that the presumption of expatriation runs against them, it would seem a logical view that the children will also become expatriated on the theory that the child while a minor should have the

[41] (March 2, 1907) 34 Stat. 1228; 4 U. S. Comp. Stat. (1916), sec. 3960.
[42] (May 9, 1918) 40 Stat. 545, 1 U. S. Comp. Stat. (Supp. 1919), sec. 4352 (11).

same status as that of the parent. While this construction probably offers the best practical solution of the question, it would appear to involve some inconsistency applied to the case of a child who remains in the United States while the parents reside abroad and become expatriated.

Probably the most serious question of doubtful construction of the law, which can scarcely be said to have been settled satisfactorily by judicial decision, is the precise meaning of the provisions of the law with regard to expatriation by residence abroad. Attorney General Wickersham in an opinion rendered on December 1, 1910,[43] expressed the view that the act of March 2, 1907, was limited to naturalized citizens while residing in foreign countries beyond the period stated in the act, the object thereof being to relieve the Government from the obligation to protect such citizens after residence abroad of a sufficient time to raise the presumption that they do not intend to return to the United States, and that the act did no apply to citizens who return to the United States, as the act of returning rebuts the presumption of noncitizenship.

However, on March 31, 1916, a decision [44] was rendered by Judge Hough of the District Court of the United States for the Southern District of New York in which the act of March 2, 1907, is given a construction at variance with that put upon it by Attorney General Wickersham.

A person named Anderson came to the United States from Sweden in 1891, was naturalized in 1905, and in the year following returned to Sweden, where he remained continually until 1915, when he again returned to this country. On arrival in New York the immigration authorities found him insane and nearly penniless. He, having been held as an alien within the prohibited classes, and ordered deported by the Secretary of Labor, a writ of habeas corpus was taken out in his behalf. The court discharged the writ and remanded the relator.

Judge Hough in his opinion referred to the conclusions reached by Attorney General Wickersham in the opinion above referred to, to the effect that the presumption of expatriation raised by the act of March 2, 1907, was created to relieve the Department of State from protecting naturalized citizens abroad "when the conditions are apparently such as to indicate that they have no bona fide intention to return and reside in the United States" and that, therefore, when "a citizen returns to the United States, and the necessity for such protection exists, it is fair to assume that with the cessation of the necessity the presumption created by the act also ceases." Judge Hough said that there is no such limitation in the act itself and no obscurity in the language of the section in question; and in accordance with his construction of the law he expressed his conclusions regarding the case at bar as follows:

"It follows that by force of the statutes Anderson lately presented himself at the door of this country with a statutory presumption against him that he had ceased to be an American citizen by reason of his long-continued residence in the land of his birth.

"I think this is a rebuttable presumption, but am clearly of opinion that there is nothing in the evidence to sustain the rebutter. It follows that Anderson is an alien, and as such plainly to be excluded upon the facts duly found and shown in the return to the writ."

This decision though explicit in some respects leaves uncertain so far as concerns judicial construction of the act the status of a great number of persons in that it did not definitely pass upon the question of whether a person on his return to the United States can rebut the presumption of expatriation. And, of course, it would be highly desirable to have a comprehensive construction of the law by the court of last resort clarifying the following points: (1) whether a person against whom the presumption of expatriation has arisen which he has tried and failed to rebut in a foreign country should after his return to the United States be regarded as having lost his American citizenship; (2) whether if such is the case he can regain citizenship and if so under what procedure; (3) whether in case he has not attempted while abroad to rebut the presumption he should be given an opportunity to do so before being excluded as an alien if he comes within a prohibited class; and (4) whether the American citizenship of a naturalized person residing in the United States is subject to challenge at any time because of some past residence abroad for a sufficient length of time to raise a presumption of expatriation which no effort was ever made to rebut,

[43] 28 Op. Atty. Gen. 504.
[44] United States ex rel. Anderson *v.* Howe (D. C. 1916) 231 Fed. 546, 549.

and if such is the case, whether such a person is entitled to some kind of an opportunity to rebut the presumption, in case, for example, his right to vote or his right to obtain a passport should be questioned. The recommendation in the report of the Citizenship Board on the first point above mentioned was explicit. It is unfortunate that the law should not have been framed in equally clear terms.

The question strongly suggests itself whether there is not considerable inconsistency in the laws of a country which has emphatically professed to value and to dignify citizenship acquired through naturalization, but which has, nevertheless, by statutory enactments, created a series of presumptions to nullify such citizenship when a naturalized citizen resides abroad for a certain period of time. Laws of this character may be of much convenience to authorities vested with their administration. And they may appear to have considerable justification in view of the large number of persons who become naturalized in the United States, not a few of whom return to the country of their origin, and after their return have no serious intention of fulfilling the obligations of American citizenship.

It should be borne in mind, however, that the character and extent of the protection to be given to such persons, in the light of the facts of any given case, lies in a measure in the discretion of the executive department of the Government.[45] It would seem more consistent with the dignity of American citizenship that a sound discretion should be exercised in such matters at the cost of some greater effort and inconvenience than that the rights of American citizenship should in a large measure be determined in accordance with certain simple arithmetical rules. The existence in the United States of two classes of citizenship, with pronounced distinctions, seems decidedly obnoxious to the principles of Americanism. In any event it seems obvious that our statutory provisions relative to expatriation by residence abroad should, for several reasons relating to the practicable application of the law, as well as to the fundamental principles of citizenship, at most be no more drastic than they were construed to be by Attorney General Wickersham; that is, they should go no further than to deprive persons of protection while residing abroad and should not entirely nullify their citizenship. Furthermore, it would seem that any statutes of this character should be applicable to native and naturalized citizens alike.[46] It is interesting to observe with regard to this subject that one of the purposes of the British law of nationality which became effective in 1915 apparently was to assure naturalized subjects the same legal status as that of natives. As a preliminary step toward enhancing the value of American citizenship obtained through naturalization it may be that a restriction of the privilege of acquiring naturalization would be desirable.

WASHINGTON, D. C.

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[45] 3 Moore, *op. cit.* 757–789.

[46] Legislation which might have the effect of depriving native citizens of protection abroad but not of citizenship could evidently raise no question as to the right of Congress under the Constitution to deprive such persons of constitutional rights of citizenship. But even the right of Congress to deprive natives of citizenship appears to be assumed in existing legislation. The act of March 2, 1907, provides that *any* American citizen shall be deemed to have expatriated himself when he shall be naturalized in a foreign country or when he has taken an oath of allegiance to a foreign State. It further provides that *any* American woman who marries a foreigner shall take the nationality of her husband. The power of Congress to enact this provision was sustained in Makenzie *v.* Hare (1915) 239 U. S. 299, 36 Sup. Ct. 106.

Ex. A.A.2
8/9/23

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